



भारत का राजपत्र

The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 38] नई दिल्ली, सितम्बर 16—सितम्बर 22, 2007, शनिवार/भाद्र 25—भाद्र 31, 1929

No. 38] NEW DELHI, SEPTEMBER 16—SEPTEMBER 22, 2007, SATURDAY/BHADRA 25—BHADRA 31, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्यालय, लोक शिकायत तथा पेंशन मंत्रालय
(कार्यालय और प्रशिक्षण विभाग)
नई दिल्ली, 14 सितम्बर, 2007

का.आ. 2672.—केंद्रीय सरकार एवं द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार के गृह विभाग की अधिसूचना सं. 20/8/2007-3 एच.जी.-1 दिनांक 31-8-2007 द्वारा प्राप्त सहमति से अपराध सं. 232/2007 दिनांक 27-8-2007 के अंतर्गत धारा 302/34 भा. दंड सहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 25 शस्त्र अधिनियम, 1959 (1959 का अधिनियम सं. 54) और धारा 3, अनु.जाति/अनु.जनजाति अधिनियम, 1989 (1989 का अधिनियम सं. 33), पुलिस स्टेशन गोहाना, जिला सोनीपत (हरियाणा) और उपर्युक्त अपराध से संबंधित अथवा संस्कृत प्रयत्नों, दुष्प्रेरणों और खड़यांत्रों तथा उसी संब्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध अथवा अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण हरियाणा राज्य पर करती है।

[फा. सं. 228/53/2007-एटीडी-II]

चन्द्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 14th September, 2007

S.O. 2672.—In exercise of the powers conferred by sub-section (1) of Section 5, read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Haryana, Home Department vide Notification No. 20/8/2007-3-HG-1 dated 31-8-2007 hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation in Crime No. 232/2007 dated 27-8-2007 under section 302/34 of the Indian Penal Code, 1860 (Act No. 45 of 1860), Section 25 of the Arms Act, 1959 (Act No. 54 of 1959) and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (Act No. 33 of 1989) registered at Police Station Gohana, District Sonepat (Haryana) and attempts abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[F. No. 228/53/2007-AVD-II]

CHANDRA PRAKASH, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 सितम्बर, 2007

का.आ. 2673.—बैंककरी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 19 की उपधारा (2) के उपबंध बैंक ऑफ बड़ौदा पर उस सीमा तक लागू नहीं होंगे जहाँ तक उनका संबंध प्रस्तावित इटली के मैसर्स पायनियर इंवेस्टमेंट की संयुक्त आस्ति प्रबंधन कंपनी के संयुक्त उद्यम की चुकता शेयर पूँजी के 30% से अधिक की इसकी शेयरधारिता से है।

[फा. सं. 7/27/2007-बीओए]

डी. पी. भारद्वाज, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th September, 2007

S.O. 2673.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India, on the recommendations of Reserve Bank of India, hereby declares that the provisions of Section 19(2) of the said Act shall not apply to Bank of Baroda in so far as it holds more than 30% shares in the equity of its proposed Joint Venture Asset Management Company with M/s. Pioneer Investments of Italy.

[F. No. 7/27/2007-BOA]

D. P. BHARDWAJ, Under Secy.

नई दिल्ली, 13 सितम्बर, 2007

का.आ. 2674.—भारतीय लघु उद्योग विकास बैंक अधिनियम, 1989, वर्ष 2000 में यथा संशोधित, की धारा (6) (1) (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, एतद्वारा, श्री राकेश सिंह, संयुक्त सचिव, वित्त मंत्रालय, वित्तीय सेवाएं विभाग, को तत्काल प्रभाव से और अगले आदेश होने तक, श्री तरुण बजाज के स्थान पर भारतीय लघु उद्योग विकास बैंक के बोर्ड में निदेशक के रूप में नामित करती है।

[फा. सं. 24/4/2002-आईएफ-1]

एम. साहू, अवर सचिव

New Delhi, the 13th September, 2007

S. O. 2674.—In exercise of the powers conferred by Section (6) (1) (C) of the Small Industries Development Bank of India Act, 1989 as amended in the year 2000, the Central Government hereby nominates Shri Rakesh Singh, Joint Secretary, Ministry of Finance, Department of Financial Services as Director on the Board of Small Industries Development Bank of India with immediate effect and until further orders vide Shri Tarun Bajaj.

[F. No. 24/4/2002-JF-I]

M. SAHU, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 10 सितम्बर, 2007

का.आ. 2675.—केन्द्रीय सरकर दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय दंत चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात्:-

2. राजीव गांधी यूनिवर्सिटी आफ हैल्थ साइंसेज, बंगलौर के संबंध में दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम सं. 49 के सामने स्तंभ 2 तथा 3 की मौजूदा प्रविष्टियों में निम्नलिखित दंत चिकित्सा कालेज के संबंध में निम्नलिखित प्रविष्टियाँ रखी जाएंगी:-

“XXII वी. एस. डेंटल कालेज एंड

हास्पिटल, बंगलौर

(ix) पेडोडान्टिक्स

(यदि 14-10-2006 को

अथवा उसके बाद प्रदान

की गई हो)

एम डी एस (पेडोडान्टिक्स)

राजीव गांधी यूनिवर्सिटी

आफ हैल्थ साइंसेज, बंगलौर”।

[फा. सं. वी.-12017/56/2002-पी एम एस (डी ई)]

राज सिंह, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 10th September, 2007

S.O. 2675.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of columns 2&3 against Serial No. 49, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to Rajiv Gandhi University of Health Sciences (RGUOHS), Bangalore, the following entries in respect of the following Dental College shall be inserted thereunder :—

“XXII. V.S. Dental College & Hospital, Bangalore

(ix) Pedodontics

(When granted on or after 14-10-2006)

MDS (Pedodontics)

Rajiv Gandhi University of
Health Sciences, Bangalore.”

[F.No. V.-12017/56/2002-PMS(DE)]

RAJ SINGH, Under Secy.

नई दिल्ली, 18 सितम्बर, 2007

का.आ. 2676.—स्नातकोत्तर चिकित्सा शिक्षा एवं अनुसंधान संस्थान, चंडीगढ़, अधिनियम, 1966 (1966 का 51) की धारा 5 के खण्ड (छ) के अनुसरण में श्रीमती सुखबूषण कौर के निधन हो जाने के कारण स्नातकोत्तर चिकित्सा संस्थान, चंडीगढ़ के संस्थान निकाय के सदस्य नहीं रहने पर उनके शेष कार्यकाल के लिए श्रीमती विप्लव ठाकुर, सदस्य, राज्य सभा को 21-8-2007 को राज्य सभा द्वारा उक्त संस्थान के एक सदस्य के रूप में सेवा करने हेतु विधिवत् रूप से निर्वाचित किया गया है बशर्ते कि वह स्नातकोत्तर चिकित्सा शिक्षा एवं अनुसंधान संस्थान, चंडीगढ़ अधिनियम, 1966 के उपबंधों का पालन करती हो।

[सं. नं.-17011/1/2006-एम.ई.-11]

बी. नायक, निदेशक

New Delhi, the 18th September, 2007

S.O. 2676.—In pursuance of clause (g) of Section 5 of the Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966 (51 of 1966) Smt. Viplove Thakur, Member, Rajya Sabha has been duly elected on 21-8-2007 by the Rajya Sabha to serve as Member of Post-Graduate Institute of Medical Education and Research, Chandigarh for the remainder term of Smt. Sukhbun Kaur, who ceased to be a member of the Institute Body due to her demise, subject to the fulfilment of the provisions of Post-Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966.

[No. V.-17011/1/2006-M.E.-II]

B. NAYAK, Director

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 17 सितम्बर, 2007

का.आ. 2677.—भविष्य निधि अधिनियम, 1925 (1925 का 19) की धारा 8 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा निदेश देती है कि उपरोक्त अधिनियम के प्रावधान राष्ट्रीय सहकारी प्रशिक्षण परिषद्, नई दिल्ली के कार्मिकों के लाभार्थ स्थापित किसी भी भविष्य निधि पर लागू होंगे।

[सं. नं.-11011/1/2007-सीईटी]

सतीश चन्द्र, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 17th September, 2007

S. O. 2677.—In exercise of the powers conferred by sub-section (2) of Section 8 of the Provident Funds Act, 1925 (19 of 1925), the Central Government hereby directs that the provisions of the said Act shall apply to any Provident Fund established for the benefit of the employees of the National Council for Cooperative Training, New Delhi.

[No. J-11011/1/2007-CET]

SATISH CHANDER, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 10 सितंबर, 2007

का.आम. 2678.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं।—

अनुसूची

| क्रम संख्या | लाइसेंस संख्या | स्वीकृत करने की तिथि वर्ष/माह | लाइसेंसधारी का नाम व पता | भारतीय मानक का शीर्षक | भा. मा. संख्या | भाग | अनुभाग | वर्ष |
|-------------|----------------|-------------------------------|--|--|----------------|--------|--------|------|
| 1. | 7757496 | 4-7-2007 | पायोनीर पॉलीमर्स 139, चंद्रमौली को-आपरेटिव इंडस्ट्रीयल इस्टेट मोहोल जिला-सोलापुर 413213 | सिंचाई उपकरण-स्प्रिंकलर पाइप्स-भाग-1 पॉलीथिलीन पाइप्स | 14151 | 1 | | 1999 |
| 2. | 7758195 | 5-7-2007 | खाटश्यामजी री-रेलिंग (नारेड) प्रा. लि. डी-121/भाग, एम आय नारेड 431602 | कांक्रीट रीइन्फोर्सेमेंट के लिए उच्च शक्ति विरूपित स्टील की छड़ें व तारें डी सी, धानेगांव | 1786 | | | 1985 |
| 3. | 7760182 | 10-7-2007 | सप्राट ज्वैलर्स गाला नं 1, शिव-पार्वती कॉम्प्लेक्स पेठ-सांगली रोड इस्लामपुर जिला-सांगली 415409 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 4. | 7761083 | 11-7-2007 | पायोनीर पॉलीमर्स 139, चंद्रमौली को-आपरेटिव इंडस्ट्रीयल इस्टेट मोहोल जिला-सोलापुर 413213 | सिंचाई उपकरण-स्प्रिंकलर पाइप्स-भाग-2 : शीघ्र जोड़ पॉलीथीन पाइप्स | 14151 | 2 | | 1999 |
| 5. | 7761184 | 12-7-2007 | बीरुमल ज्वैलर्स 152/12, सिरु चौक गांधीनगर तालुका-कारवीर जिला-कोल्हापुर 416119 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 6. | 7764493 | 25-7-2007 | सुरेख ज्वैलर्स 287/बी, एम जी रोड पुणे-411001 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 7. | 7764594 | 17-7-2007 | फिनोलेस्स केबल्स लिमिटेड (प्रकाशीय विभाग) गट संख्या-384 गांव-उरसे तालुका-भावल जिला-पुणे 410506 | सामान्य प्रकाशीय सेवाओं के लिए स्वर्ण प्रस्फुटित लेप्स, (भाग-1) : सुरक्षा आवश्यकताएं और (भाग-2) : संपूर्ण आवश्यकताएं | 1511 | 1 और 2 | | 2002 |

[सं. सीएमडी/13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARD

New Delhi, the 10th September, 2007

S.O. 2678.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

| Sl. No. | Licence No. | Grant Date | Name & Address of the Party | Title of the Standard | IS No. | Part | Section | Year |
|------------|----------------|---------------|--|--|--------|-------|---------|------|
| 1. | 7757496 | 4-7-2007 | Pioneer Polymers 139, Chandramauli Co-op Indl. Estate, Mohol District-Solapur-413213 | Irrigation equipment Sprinkler pipes-Part 1 | 14151 | 1 | | 1999 |
| 2. | 7758195 | 5-7-2007 | Khatushyamji Re-Rolling (Nanded) Pvt. Ltd. D-121/Part, MIDC Dhanegaon Nanded-431602 | High Strength deformed steel bars and wires for concrete reinforcement | 1786 | | | 1985 |
| 3. | 7760182 | 10-7-2007 | Samrat Jewellers Gala No. 1 Shiv-Parvati Complex Peth-Sangli Road Islampur District, Sangli-415409 | Gold and gold alloys Jewellery/artefacts- Fineness and marking | 1417 | | | 1999 |
| 4. | 7761083 | 11-7-2007 | Pioneer Polymers 139, Chandramauli Co-op Estate, Mohol District, Solapur-413213 | Irrigation equipment Sprinkler Pipes Part-2 Quick coupled polyethylene pipes | 14151 | 2 | | 1999 |
| 5. | 7761184 | 12-7-2007 | Veerumal Jewellers 152/12, Siru Chowk Gandhinagar Taluka-Karveer District, Kolhapur-416119 | Gold and gold alloys, Jewellery/artefacts- Fineness and marking | 1417 | | | 1999 |
| 6. | 7764493 | 25-7-2007 | Surekh Jewellers 287/B, M.G. Road Pune-411001 | Gold and gold alloys, jewellery/artefacts Fineness and marking | 1417 | | | 1999 |
| 7. | 7764594 | 17-7-2007 | Finolex Cables Ltd. (Lighting Division) Gat No. 384 Village-Urse Taluka-Maval District, Pune-410506 | Self ballasted lamps for general lighting services (Part I) : Safety Requirements and (part 2) Performance Requirements | 15111 | 1 & 2 | | 2002 |

[No. CMD/13:11]

A.K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 10 सितम्बर, 2007

का.आ. 2679.—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपनियम (6) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

| क्रम संख्या | लाइसेंस संख्या सीएम/एल/ | लाइसेंसधारी का नाम व पता | लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक | रद्द/स्थगित करने की तिथि |
|-------------|----------------------------|--|---|--------------------------|
| 1. | 7737389 | किशोर अकुवा फूड्स शैड नं. 81/एबी लोनावाला इंडस्ट्रीयल इस्टेट नांगरांव लोनावाला तालुका-मावल जिला-पुणे 410401 | भारा 14543 : 2004 पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा) | 16-7-2007 |

[सं. सी एम डी/13:13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 10th September, 2007

S.O.2679.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/with effect from the date indicated against each.

| Sl. No. | Licence No. | Name and Address of the licensee | Article/Process with relevant Indian Standards covered by the licence cancelled | Date of cancellation |
|---------|-------------|---|---|----------------------|
| 1. | 7737389 | Kishor Aqua Foods Shed No. 81/AB Lonavala Industrial Estate Nangaraon Lonavala Taluka Maval District Pune-410401 | IS 14543:2004 Packaged drinking water (Other than packaged natural mineral water) | 16-7-2007 |

[No. CMD/13:13]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 10 सितम्बर, 2007

का.आ. 2680.—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपनियम (6) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

जुलाई 2007 में रद्द किये गये अनुसूची

| क्रम संख्या | लाइसेंस संख्या सीएम/एल/ | लाइसेंसी का नाम व पता | उत्पाद का नाम तथा आई एस | अनुसृति रद्द करने की तिथि |
|-------------|----------------------------|---|------------------------------|---------------------------|
| 1. | 7735991 | मैसर्स राज एंटरप्राइज़, ए/25/117, कृष्ण इंडस्ट्रीयल एस्टेट, बी आई डी सी गोरवा रोड के सामने, बड़ोदा 390016 | पैकेजबंद पेयजल 14543:2004 | 17-7-2007 |
| 2. | 7732177 | मैसर्स राहसिंग एग्रो इंडस्ट्रीज़, एट पानवाडी, प्लाट नंबर 103, कपूरा रोड, सर्वे नंबर 149, ता वायरा सूरत | पैकेजबंद पेयजल 14543:2004 | 27-6-2007 |

[सं. सी एम डी/13:13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 10th September, 2007

S.O. 2680.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each.

SCHEDULE**Cancelled licence for the month of July 2007**

| S.I. No. | Licence No. | Licensee Name | Product & IS No. | Date of Cancel |
|----------|-------------|---|--|----------------|
| 1. | 7735991 | M/s. Raj Enterprises, A/25/17 Krishna Indl. Estate, Opp. BIDC, Gorwa Road, Vadodara-390 016 | Packaged Drinking Water IS 14543:2004 | 17-07-2007 |
| 2. | 7732177 | M/s. Rising Agro Ind. at Panvadi, Plot No. 103, Kapura Road, Survey No. 149, Ta Vyara Surat | Packaged Drinking Water IS 14543:2004 | 27-06-2007 |

[No. CMD/13:13]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 10 सितम्बर, 2007

का.आ. 2681.—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के नियम (4) के उपनियम (5) के अनुसरण में भारतीय मानक व्यूरो एतदद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची**जुलाई 2007 में स्वीकृत किये गये अनुज्ञाप्ति**

| क्रम संख्या | लाइसेंस संख्या | लाइसेंसी का नाम तथा पता | उत्पाद का नाम तथा आई एस | अनुज्ञाप्त स्वीकृत करने की तिथि |
|-------------|----------------|--|--|---------------------------------|
| (1) | (2) | (3) | (4) | (5) |
| 1. | 7756902 | मैसर्स महाराजा ज्वैलर्स, शॉप नंबर 1, लक्ष्मी शापिंग सेंटर, पुरोहित डेरी के पास, गुंजन रोड, जी आई डी सी, वारी बलसाद-396 195 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 03-07-2007 |
| 2. | 7757092 | मैसर्स गोविंदजी ज्वैलर्स, वार्ड नंबर 19 एफ, नंबर 140/1, शॉप नंबर 314, शेरी नंबर 5, विजय काम्पलैक्स, ललिता पार्क सोसाइटी, कांतेश्वर महादेव मंदिर रोड, कट्टरगाम, सूरत | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 03-07-2007 |
| 3. | 7757294 | मैसर्स सुवर्ण आभूषण, 1, अक्षर पैलेस, कीर्ति डेरी, हीरावाडी रोड, सैजपुर बोधा, अहमदाबाद-382 345 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 03-07-2007 |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|--|---|------------|
| 4. | 7757395 | वर्धमान ज्वैलर्स, 1211, रुपा सरचंदी पोल, एम जी हवेली रोड, मानेक चौक, अहमदाबाद-380 001 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 03-07-2007 |
| 5. | 7758397 | मैसर्स जित ज्वैलर्स, बी 13, रामकृष्ण शॉपिंग सैंटर, मेफेयर रोड, आनंद-388 001 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 06-07-2007 |
| 6. | 7758502 | पदमा ज्वैलर्स, 173, विहार हाऊसिंग सोसाइटी 2, वैलीनाथ चौक, सिंगापुर क्रास रोड, राधेश्याम सोसाइटी, वेड रोड, सूरत-395004 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 06-07-2007 |
| 7. | 7758603 | रमेशचंद्र चिमनलाल सोनी, मेन बाजार, युनियन बैंक आफ इंडिया के नीचे, पोस्ट बरेजा, ता दसकराय, अहमदाबाद-382 425 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 06-07-2007 |
| 8. | 7758704 | आवना ज्वैलर्स, देना बैंक के सामने, एम जी रोड, वलसाड-396 001 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 06-07-2007 |
| 9. | 7758805 | मैसर्स जाझर ज्वैलर्स, संसक्षुट, प्लाट नंबर 1182, सेक्टर 3 डी, गांधीनगर-382 003 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 06-07-2007 |
| 10. | 7760384 | मैसर्स नकोडा ज्वैलर्स, कृष्णा काम्पलैक्स, हाई स्कूल रोड, पी ओ चिकली, नवसारी-396 521 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 10-07-2007 |
| 11. | 7760485 | मान ओरना, 170, मदन गोपाल एस हवेली रोड, रुपा सूरचंदी पोल के सामने, मानेक चौक, अहमदाबाद-380 001 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 10-07-2007 |
| 12. | 7760687 | मैसर्स रिलायंस रिटेल लिमिटेड, इसकान मैगा माल, राजपथ कल्ब के पास, एस जी मार्ग, जोधपुर अहमदाबाद-380 054 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 11-07-2007 |
| 13. | 7760889 | मैसर्स विशाल गोल्ड पैलेस, ए 1, रामकृष्ण कालोनी, मंसापुराना महादेव के सामने, गोविंदवाडी, इसनपुर, अहमदाबाद | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 11-07-2007 |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|---|---|------------|
| 14. | 7761689 | मैसर्स स्वाडिया ज्वैलरी हाउस, 5, शिवालिक काम्पलैक्स, अमीकुज चार रस्ता, नारायणपुरा, अहमदाबाद-380013 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 16-07-2007 |
| 15. | 7762186 | मैसर्स जलाराम गोल्ड पैलेस, प्लाट नंबर 5/1, सेक्टर 3 ए, गांधीनगर-382 006 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 18-07-2007 |
| 16. | 7762287 | श्री हरिदर्शन ज्वैलर्स, 6/7, परिजात शार्पिंग सैटर, स्वामिनारायण मंदिर रोड के पास, कालूपुर, अहमदाबाद | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 19-07-2007 |
| 17. | 7762388 | महाकीर ज्वैलर्स, उरमिश एपार्टमेंट नंबर 1, यमुना बाग, छोटा बाजार, सूरत | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 19-07-2007 |
| 18. | 7757193 | मैसर्स गोविंदजी ज्वैलर्स, वार्ड नंबर 19 एफ, नंबर 140/1, शॉप नंबर 314, शेरी नंबर 5, विजय काम्पलैक्स, ललिता पार्क सोसाइटी, कांतेश्वर महादेव मंदिर रोड, कदटरगाम, सूरत | चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112:2003 | 03-07-2007 |
| 19. | 7758401 | मैसर्स जित ज्वैलर्स, बी 13, रामकृष्ण शार्पिंग सैटर, मेफेयर रोड, आनंद-388 001 | चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112:2003 | 06-07-2007 |
| 20. | 7760788 | मैसर्स रिलायंस रिटेल लिमिटेड, इसकान मैगा मास, राजपथ कर्त्तव्य के पास, एस जी मार्ग, जोधपुर, अहमदाबाद-380 054 | चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112:2003 | 11-07-2007 |
| 21. | 7762489 | महाकीर ज्वैलर्स, उरमिश उपार्टमेंट नंबर 1, यमुना बाग, छोटा बाजार, सूरत | चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112:2003 | 19-07-2007 |
| 22. | 7761386 | शुद्ध जल बिकरेज, 19, प्रकाश एस्टेट, रीटानगर, बसतरल रोड, अहमदाबाद-380 026 | पैकेजबैंक पैपलाल आई एस 14543:2004 | 13-07-2007 |
| 23. | 7765596 | थाटिल ज्वैलर्स, 102, पहली मॉजिल, न्यूयार्क प्लाजा, जिस बंगला रोड, बोडकदेव, अहमदाबाद-380 054 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 25-07-2007 |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|---|---|------------|
| 24 | 7766093 | सोनी अमृतलाल पोपटलाल तथा कम्पनी, डां गिरीधर पटेल मार्ग, गुरुनानक चौक, सावरकांडा-385 001 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 18-07-2007 |
| 25 | 7756801 | केशवलाल कालिदास चोकसी, चोकसी बाजार, पादरा, बडोदरा 391 440 | स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417:1999 | 03-07-2007 |
| 26 | 7758906 | मैसर्स जांझर ज्वैलर्स, संसक्रुट, प्लाट नंबर 1182, सैकर 3 डी, गांधीनगर 382 003 | चांदी एवं चांदी मिश्र धातुओं के आभूषणों/शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112:2003 | 6-07-2007 |

[सं. सी एम डी/13:11]

ए. के. तलवार, उप-महानिदेशक (मुहर)

New Delhi, the 10th September, 2007

S.O. 2681.—In pursuance of sub-regulation (5) of the Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following Schedule.

SCHEDULE

| Sr. No. | Licence No. | Licensee Name | Product & IS No. | Date of GOL |
|---------|-------------|---|---|-------------|
| (1) | (2) | (3) | (4) | (5) |
| 1. | 7756902 | Maharana Jewellers, Shop No. 1, Laxmi Shopping Centre, Near Purohit Dairy, Gunjan Road, GIDC, Vapi, Valsad-396195 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 03/07/2007 |
| 2. | 7757092 | Govindji Jewellers, Ward No. 19 F, Nond No. 140/1, Shop No. 314, Sheri No. 5, Vijay Complex, Lalita Park Society, Kantareswar Mahadev Mandir Road, Katargam, Surat | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 03/07/2007 |
| 3. | 7757294 | Suvarn Aabhushan 1, Akshar Palace, Near Kirti Dairy, Hirawadi Road, Saipur Bagha, Ahmedabad- 382345 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 03/07/2007 |
| 4. | 7757495 | Vardhman Jewellers 1211, Rupa Surchandni Pole, M.G. Haveli Road, Manek Chowk, Ahmedabad- 380001 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 03/07/2007 |
| 5. | 7758397 | Jit Jewellers, B-13, Ramkrishna Shopping Centre, Mayfair Road, Anand-388001 | Gold and Gold Alloys, Jewellery/Artefacts-Fineness and Marking IS 1417: 1999 | 06/07/2007 |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|--|--|------------|
| 6. | 7758502 | Padma Jewellers, 173, Vihar Housing Society-2, Valinath Chowk, Singapore Cross Roads, Opp. Radheshyam Society, Ved Road, Surat-395004 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 06/07/2007 |
| 7. | 7758603 | Rameshchandra Chimanlal Soni, Main Bazar, Below Union Bank of India, Post : Bareja, Tal : Dascroi, Ahmedabad 382425 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 06/07/2007 |
| 8. | 7758704 | Bhavna Jewellers, Opp. Dena Bank, M.G. Road, Valsad-396001 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 06/07/2007 |
| 9. | 7758805 | Zanzar Jewellwers, “Sanskrit”, Plot No. 1182, Sector-3-D, Gandhinagar-382 003 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 06/07/2007 |
| 10. | 7760384 | Nakoda Jewellers, Krishna Complex, High School Road, P.O. Chikhli Navsari-396 521 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 10/07/2007 |
| 11. | 7760485 | Main Orna 170, Madan Gopal's Haveli Road, Opp. Rupa Surachandni Pole, Manek Chowk, Ahmedabad-380 001 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 10/07/2007 |
| 12. | 7760687 | Reliance Retail Limited Iscon Mega Mall, Near Rajpath Club, S.G. Marg, Jodhpur Ahmedabad-380 054 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 11/07/2007 |
| 13. | 7760889 | Vishal Gold Palace, A-1, Ramkrishna Colony, Opp. Mansapurna Mahadev, Govindpuri, Isanpur Ahmedabad 380043 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 11/07/2007 |
| 14. | 7761689 | Swadia's Jewellery House, 5, Shivalik Complex, Amikunj Char Rasta, Naranpura, Ahmedabad-380013 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 16/07/2007 |
| 15. | 7762186 | Jalaran Gold Palace, Plot No : 5/1, Sector-3 A, Gandhinagar-382006 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 18/07/2007 |
| 16. | 7762287 | Shri Haridarshna Jewellers, 6/7, Parijat Shopping Centre, Near Swaminarayan Mandir Road, Kalupur, Ahmedabad | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking, IS 1417:1999 | 19/07/2007 |
| 17. | 7762388 | Mahavir Jewellers, Urmish Apartment No. 1, Yamuna Baug, Chauta Bazar, Surat | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 19/07/2007 |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|---|---|------------|
| 18. | 7757193 | Govindji Jewellers, Ward No. 19 F, Nond No. 140/01, Shop No. 314, Sheri No. 5, Vijay Complex, Lalita Park Society, Kantareswar Mahadev Mandir Road, Katargam, Surat | Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003 | 03/07/2007 |
| 19. | 7758401 | Jit Jewellers B-13, Ramakrishna Shopping Centre, Mayfair Road, Anand 388001 | Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003 | 06/07/2007 |
| 20. | 7760788 | Reliance Retail Limited, Iscon Mega Mall, Near Rajpath Club, S.G. Marg, Jodhpur Ahmedabad 380054 | Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003 | 11/07/2007 |
| 21. | 7762489 | Mahavir Jewellers, Urmish Apartment No. 1, Yamuna Baug, Chauta Bazar, Surat | Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003 | 19/07/2007 |
| 22. | 7761386 | Sudh Jal Beverages 19, Prakash Estate, Ritanagar, Vastral Road, Ahmedabad-380026 | Packaged Drinking Water IS 14543:2004 | 13/07/2007 |
| 23. | 7765596 | Thattil Jewellers 102, First Floor, New York Plaza, Judges Bunglos Road, Bodakdev, Ahmedabad- 380054 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 25/07/2007 |
| 24. | 7766093 | Soni Amrutlal Popatlal and Co., Dr. Girdhar Patel Marg, Gurunanak Chowk, Sabarkantha-385001 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 18/07/2007 |
| 25. | 7756801 | Keshavial Kalidas Choksi, Choksi Bazar, Padra, Vadodara-391440 | Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking IS 1417:1999 | 03/07/2007 |
| 26. | 7758906 | Zanzar Jewellers “Sanskrit”, Plot No 1182, Sector-3-D, Gandhinagar-382003 | Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003 | 06/07/2007 |

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2632,—भारत के नानक व्यूरो (प्रमाणन) नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में एतद्वारा अधिसूचित किया जाता है कि भौतिक भानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं और वापस ले लिये गये हैं :

अनुसूची

| क्रम संख्या | रद्द किये गये भानकों की संख्या और इनका | भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित | टिप्पणी |
|----------------|--|--|---------|
| (1) | (2) | (3) | (4) |
| 1. | आई इस 1329 : 1975 वायुमाल टिक्का की विविधता (चौकर और त्रितीय) और फटिट्याँ) (प्रथम पुनरीक्षा) | का.आ. संख्या 1596 दिनांक 10-05-1979 | |

| (1) | (2) | (3) | (4) |
|-----|--|--|-----|
| 2. | आई एस 2178 : 1962. वायुयान नोडक के निर्माण में प्रयुक्त टिम्बर की विशिष्टि | का.आ. संख्या 0483 दिनांक 16-02-1963 | |
| 3. | आई एस 3805 : 1979 पेंट-टॉप लकड़ी के केसों की विशिष्टि (प्रथम पुनरीक्षण) | का.आ. संख्या 2584 दिनांक 03-10-1981 | |
| 4. | आई एस 7630 : 1975 प्लाईवुड के ड्रमों की विशिष्टि | का.आ. संख्या 3081 दिनांक 08-10-1977 | |

[संदर्भ : सीईडी/राजपत्र]

ए. के सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 12th September, 2007

S.O. 2682.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, it is hereby notified that the Indian Standards, particulars of which are mentioned in the Schedule given hereafter, have been cancelled and stand withdrawn.

SCHEDULE

| Sr. No. | No. & Year of the Indian Standards Cancelled | S.O. No. & Date published in the Gazette of India, Part-II, Section-3, Sub section(ii) | Remarks |
|---------|---|--|---------|
| (1) | (2) | (3) | (4) |
| 1. | IS 1329:1975 Specification for Aircraft timber (baulks and scantlings) (First revision) | S.O. No. 1596 Dated 10-05-1979 | |
| 2. | IS 2178:1962 Specification for Timber for use in aircraft propeller construction | S.O. No. 0483 Dated 16-02-1963 | |
| 3. | IS 3805:1979 Specification for pent-top wooden cases (First revision) | S.O. No. 2584 Dated 03-10-1981 | |
| 4. | IS 7630:1975 Specification for Plywood drums | S.O. No. 3081 Dated 08-10-1977 | |

[Ref: CED/Gazette]

A. K. SAINI, Sc. 'F' & Head (Civil Engg.)

नई दिल्ली, 13 सितम्बर, 2007

का.आ. 2683.—भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक की संख्या और वर्ष | संशोधन की संख्या और तिथि | संशोधन लागू होने की तिथि |
|-------------|---------------------------------------|----------------------------|--------------------------|
| (1) | (2) | (3) | (4) |
| 1. | आई एस 758:1988 | संशोधन संख्या 2 अगस्त 2007 | सितम्बर 2007 |
| 2. | आई एस 863:1988 | संशोधन संख्या 4 अगस्त 2007 | सितम्बर 2007 |

इस संशोधन की प्रति भारतीय मानक व्यूरो मनक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर पट्टना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी.एक्स/जी-25]

एम. एस. वर्मा, निदेशक एवं प्रमुख (टीएक्सडी)

New Delhi, the 13th September, 2007

S.O. 2683.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

| Sl. No. | No. and year of the Indian Standards | No. and year of the amendment | Date from which the amendment shall have effect |
|---------|--------------------------------------|-------------------------------|---|
| (1) | (2) | (3) | (4) |
| 1. | IS 758: 1988 | Amendment No. 2 August 2007 | September 2007 |
| 2. | IS 863: 1988 | Amendment No. 4 August 2007 | September 2007 |

Copy of these Amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkatta Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TXD/G-25]

M. S. VERMA, Director & Head (Textiles)

नई दिल्ली, 14 सितम्बर, 2007

का.आ. 2684.—भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

| क्रम संख्या | संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक | नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष | संशोधन लागू होने की तिथि |
|-------------|--|---|--------------------------|
| (1) | (2) | (3) | (4) |
| 1. | आईएस 11999:2007-धातुओं की चद्दर के लिए प्लास्टिक स्ट्रेन अनुपात 'आर' ज्ञात करने की पद्धति (पहला पुनरीक्षण) | आईएस 11999:1987 | 30 जून 2007 |

इन संशोधनों की प्रतियाँ भारतीय मानक की प्रतियाँ भारतीय मानक व्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर पटना, पूणे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 3/टी-103]

डा. (श्रीमति) स्नेह भाट्टा, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 14th September, 2007

S.O. 2684.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of

which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

| Sl. No. | No. & Year of the Indian Standards Established | No. & year of Indian Standards, if any, Superseded by the New Indian Standard | Date of Established |
|---------|--|---|---------------------|
| (1) | (2) | (3) | (4) |
| 1. | IS 11999:2007 Method for Determination of Plastic Strain Ratio 'r' for Sheet Metals (First revision) | IS 11999:1987 | 30-06-2007 |

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 3/T-103]
DR. (Mrs.) SNEH BHATLA, Scientist 'F' & Head (Met Engg)

नई दिल्ली, 14 सितम्बर, 2007

का.आ. 2685.—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

| क्रम संख्या | लाइसेंस संख्या | स्वीकृत करने की तिथि वर्ष/माह | लाइसेंसधारी का नाम व पता | भारतीय मानक का शीर्षक | भा. मा संख्या | भाग | अनुभाग | वर्ष |
|-------------|----------------|-------------------------------|--|--|---------------|-----|--------|------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1 | 7764897 | 26-07-2007 | जयश्री इलैक्ट्रॉन प्रा. लि. ईएल-34, जे ब्लॉक, एमआयडीसी, भोसरी पुणे-411026 | विस्फोटक गैस वातावरण हेतु विद्युतीय उपकरण आंतरिक सुरक्षा-आई | 5780 | | | 2002 |
| 2 | 7764901 | 26-07-2007 | कोठारी केबल्स 158, चंद्रमौली को- ऑपरेटिव इंडस्ट्रीयल इस्टेट, मोहोल, सोलापुर-413213 | 1100 वो तक और सहित कार्यकारिता के लिए पीबीसी इंशुलेटेड केबल्स | 694 | | | 1990 |
| 3 | 7766295 | 31-07-2007 | संतोक पेधी 348, सेंटर स्ट्रीट, पुणे-411001 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 4 | 7766396 | 01-08-2007 | डागीना 576, सदाशिव पेठ लक्ष्मी रोड दुल्हन सांडी के सामने पुणे-411030 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/ कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|---------|------------|---|---|-------|-----|-----|------|
| 5.. | 7766501 | 01-08-2007 | एवरेस्ट कॉटो सिलिंडर लिमिटेड, प्लॉट नं. ई-22, एम आय डी सी इंडस्ट्रीयल के लिए ईधन के रूप में एरिया चिकलथाना, औरंगाबाद-431 210 | ऑन बोर्ड भंडारण हेतु कप्रेस्ड प्राकृतिक गैस सिलिंडर स्वचालित वाहनों के उपयोग एरिया चिकलथाना, औरंगाबाद-431 210 | 15490 | | | 2004 |
| 6. | 7762994 | 01-08-2007 | अकुआ हॉल्थ प्रॉडक्ट्स गट संख्या 34, नांदेड-नागपुर हाइवे दाभाद (बाबापुर) जिला-नांदेड-431602 | पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा) | 14543 | | | 2004 |
| 7. | 7769305 | 10-08-2007 | सत्या पेधी 560, सेंटर स्ट्रीट, कोप, पुणे-411001 | स्वर्ण और स्वर्ण मिश्रधातु आभूषण/कृत्रिम-शिल्पकृति और चिन्हांकन | 1417 | | | 1999 |
| 8. | 7769911 | 13-08-2007 | कला इंडस्ट्रीज, सर्व नं. 12/1/1 नरोगांव कात्रज-धायरी रोड तालुका-हवेली जिला-पुणे-411041 | प्रीकॉस्ट कांक्रीट पाइप्स (रीइन्फोर्समेंट सहित एवं रहित) | 458 | | | 2003 |

[स. सौ एम डी/13 : 11]

ए. के. तलवार, उप-महानिदेशक (मुहर)

New Delhi, the 14th September, 2007

S.O. 2685.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule.

SCHEDULE

| Sl. No. | Licence No. | Grant Date | Name & Address of the Party | Title of the Standard | IS No. | Part | Section | Year |
|------------|----------------|---------------|--|---|--------|------|---------|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1. | 7764897 | 26-7-2007 | Jayashree Electron Pvt. Ltd., EL-34, 'J' Block MIDC, Bhosari, Pune-411026 | Electrical apparatus for explosive gas atmospheres— intrinsic safety 'i' | 5780 | | | 2002 |
| 2. | 7764901 | 26-7-2007 | Kothari Cables 158, Chandramauli Co-op Indl Estate, Mohol Solapur-413213 | PVC insulated cables for working voltages upto and including 1100-V | 694 | | | 1990 |
| 3. | 7766295 | 31-7-2007 | Santok Pedhi 348, Centre Street, Pune-411001 | Gold and gold alloys, Jewellery/artefacts- Fineness and marking | 1417 | | | 1999 |
| 4. | 7766396 | 1-8-2007 | Dagina 576, Sadashiv Peth Laxmi Road, Opposite Dulhan Sarees Pune-411030 | Gold and gold alloys, Jewellery/artefacts- Fineness and marking | 1417 | | | 1999 |
| 5. | 7766501 | 1-8-2007 | Everest Kanto Cylinder Ltd., Plot No. E-22, MIDC Indl. Area, Chikalthana, Aurangabad-431210 | Cylinders for on board storage of compressed natural gas as a fuel for automotive vehicles | 15490 | | | 2004 |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----|---------|-----------|---|--|-------|---|---|------|
| 6. | 7762994 | 1-8-2007 | Aqua Health Products Gut No. 34, Nanded—Nagpur Highway, Dabhad (Babapur) District Nanded-431602 | Packaged drinking water (Other than packaged natural mineral water) | 14543 | | | 2004 |
| 7. | 7769305 | 10-8-2007 | Satya Pedhi, 560, Centre Street, Camp Pune-411001 | Gold and gold alloys, Jewellery/artefacts- Fineness and marking | 1417 | | | 1999 |
| 8. | 7769911 | 13-8-2007 | Kala Industries, Sr. No. 12/1/1 Nargegaon Katraj-Dhayari Road, Taluka Haveli, District Pune-411041 | Precast concrete pipes (with and without reinforcement) | 458 | | | 2003 |

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 17 सितम्बर, 2007

का.आ. 2686.—भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उपनियम (6) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

| क्रम संख्या | लाइसेंस संख्या | चालू तिथि | लाइसेंसधारी का नाम व पता | भारतीय मानक का शीर्षक व संबंधित भारतीय मानक |
|-------------|----------------|---------------|--|---|
| (1) | (2) | (3) | (4) | (5) |
| | | अगस्त 2007 | | |
| 1. | 8846403 | 26-07-2007 | मैसर्स गैलेक्सी कोनकैब (इ.) प्रा. लि., जी-164, 164 ए, सीतापुरा औद्योगिक क्षेत्र, जयपुर (राजस्थान) | 1554 (भाग 1) : 1988 पीबीसी इन्सुलेटेड (एचडी) केबल्स |
| 2. | 8846302 | 26-07-2007 | मैसर्स गैलेक्सी कोनकैब (इ.) प्रा. लि., जी-164, 164 ए, सीतापुरा औद्योगिक क्षेत्र, जयपुर, (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीबीसी केबल्स |
| 3. | 8848003 | 31-07-2007 | मैसर्स ईश्वर केबल्स (प्रा.) लि., एफ-661, रोड नं. 9 एफ 2 विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 694 : 1990 पीबीसी इन्सुलेटेड केबल्स |
| 4. | 8848104 | 31-07-2007 | मैसर्स ईश्वर केबल्स (प्रा.) लि., एफ-661, रोड नं. 9 एफ 2 विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीबीसी केबल्स |
| 5. | 8848205 | 31-07-2007 | मैसर्स ईश्वर केबल्स (प्रा.) लि., एफ-661, रोड नं. 9 एफ 2 विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 1554 (भाग 1) : 1988 पीबीसी इन्सुलेटेड (एचडी) केबल्स |
| 6. | 8847708 | 31-07-2007 | मैसर्स भारत पोलीकैम इण्डस्ट्रीज एफ-334, भेवाड़ औद्योगिक क्षेत्र, मादरी, उदयपुर-313 001 (राजस्थान) | 9537 (भाग 3) : 1983 रिजिज लैन कन्फ्यूर्ड फॉर इन्सुलेटिंग मैटेरियल्स |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|------------|---|--|
| 7. | 8847910 | 31-07-2007 | मैसर्स बोन्टन केबल्स प्रा. लि. ए-114-115, रीको औद्योगिक क्षेत्र, फेज-1, मिवाडी-301 019 जिला-अलवर, (राजस्थान) | 694 : 1990 पीवीसी इन्सुलेटेड केबल्स |
| 8. | 8848710 | 03-08-2007 | मैसर्स चलपोत ज्वैलर्स, पहली भविल, द्वारकेश मार्केट, बस स्टेण्ड, कांकरोली, जिला-राजसमंद-313 324 (राजस्थान) | 2112 : 2003 रजत आभूषणों की हॉलमार्किंग |
| 9. | 8849106 | 08-08-2007 | मैसर्स स्वास्तिक टाइल्स, एफ-660-661 ए, नार्थ एक्सटेंशन, मत्स्य औद्योगिक क्षेत्र, अलवर, (राजस्थान) | 13801 : 1993 चैर्कड़ सीमेन्ट कॉक्रीट टाइल्स |
| 10. | 8849611 | 08-08-2007 | मैसर्स न्यू अंबिका ज्वैलर्स, लंकारो की पोल के सामने, भैरूं बाजार, बालोतरा, जिला-बाडमेर-334 002 (राजस्थान) | 1417 : 1999 स्वर्णाभूषणों की हॉलमार्किंग |
| 11. | 8849005 | 08-08-2007 | मैसर्स स्वास्तिक टाइल्स, एफ-660-661 ए, नार्थ एक्सटेंशन, मत्स्य औद्योगिक क्षेत्र, अलवर, (राजस्थान) | 1237 : 1980 सीमेन्ट कॉक्रीट फ्लोरिंग टाइल्स |
| 12. | 8850087 | 09-08-2007 | मैसर्स फरकोन इंजीनियर्स कॉर्पोरेशन एफ-383, रोड नं. 9 एफ विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 7098 (भाग 1) : 1988 सक्सएलपीई इन्सुलेटेड पीवीसी केबल्स |
| 13. | 8850794 | 10-08-2007 | मैसर्स जितेन्द्र इण्डस्ट्रीज एफ-207, माणिडया रोड, डीआईसी ऑफिस के पास, पली-मारवाड-306 401 जिला-पाली, (राजस्थान) | 14151 (भाग 2) : 1999 क्यूसीपीई पाईप्स |
| 14. | 8850592 | 09-08-2007 | मैसर्स ईश्वर मैटल इण्डस्ट्रीज, एफ-79 बी, रोड नं. 6, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 1554 (भाग 1) : 1988 पीवीसी इन्सुलेटेड (एचडी) केबल्स |
| 15. | 8850491 | 09-08-2007 | मैसर्स ईश्वर मैटल इण्डस्ट्रीज, एफ-79 बी, रोड नं. 6, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 14255 : 1995 एरियल बन्ड केबल्स |
| 16. | 8850693 | 09-08-2007 | मैसर्स ईश्वर मैटल इण्डस्ट्रीज, एफ-79 बी, रोड नं. 6, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी केबल्स |
| 17. | 8851796 | 16-08-2007 | मैसर्स श्री अग्रसेन इण्डस्ट्रीज, ई-293 (ए) रोड नं. 14, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 398 (भाग 2) : 1996 ए. सी. एस. आर. |
| 18. | 8852394 | 16-08-2007 | मैसर्स वैष्णव पैकेज ड्रिंकिंग बॉटर, प्लॉट नं. 13 एवं 14 मण्डल्दा, चित्तौडगढ़, (राजस्थान) | 14543 : 2004 पैकेज ड्रिंकिंग बॉटर |
| 19. | 8852596 | 13-08-2007 | मैसर्स पॉवर केबल इण्डस्ट्रीज, जी-1/801, सीतापुरा औद्योगिक क्षेत्र, जयपुर-302 022 (राजस्थान) | 7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी केबल्स |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|------------|---|---|
| 20. | 8852701 | 17-08-2007 | मैसर्स सिटा सीमेन्ट्स प्रा. लि., प्लॉट नं. जी-1-101, रीको औद्योगिक क्षेत्र, बहरोड, जिला-अलवर, (राजस्थान) | 8112 : 1989 43 ग्रेड ओपीसी |
| 21. | 8852697 | 17-08-2007 | मैसर्स सैलेश सिमेन्ट उद्योग (प्रा.) लि., ए-21-बी, रीको औद्योगिक क्षेत्र, बहरोड, जिला-अलवर-301 701 (राजस्थान) | 8112 : 1989 43 ग्रेड ओपीसी |
| 22. | 8853093 | 21-08-2007 | मैसर्स संतोष उद्योग, एफ-727, रोड नं. 9 एफ 3, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 8794 : 1988 सीआईडी ज्वाइंदस |
| 23. | 8852903 | 17-08-2007 | मैसर्स डी. एस. इण्डस्ट्रीज, एफ-424 (ए), मरुधर औद्योगिक क्षेत्र फेज-II, बासनी, जोधपुर-342 003 (राजस्थान) | 9537 (भाग 3) : 1983 रिजिड प्लेन कन्ड्यूट्स फॉर इन्सुलेटिंग मैटेरियल्स |
| 24. | 8853396 | 21-08-2007 | मैसर्स जयपुर वायर एण्ड केबल्स, जी-509-बी, रोड नं. 9 ए, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 694 : 1990 पीवीसी इन्सुलेटेड केबल्स |
| 25. | 8853602 | 22-08-2007 | मैसर्स नवरतन पाईप एण्ड प्रोफाईल लि., एसपी-6, रीको औद्योगिक क्षेत्र, खुशखेड़ा, जिला-अलवर (राजस्थान) | 1239 (भाग 1) : 2004 माइल्ड स्टील ट्यूब्स |
| 26. | 8854196 | 22-08-2007 | मैसर्स सूर्योश इलैक्ट्रिकल इण्डस्ट्रीज, एफ-255 ए, रोड नं. 13, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302 013 (राजस्थान) | 14255 : 1995 एरियल बन्ड केबल्स |
| 27. | 8854297 | 22-08-2007 | मैसर्स जयन्ती कोल्ड स्टोरेज, राजगढ़ रोड, ग्राम-दादर जिला-अलवर-301 003 (राजस्थान) | 14543 : 2004 पैकेजड ड्रिंकिंग वाटर 8846504 |
| 28. | 8846504 | 26-07-2007 | मैसर्स आदित्य एसोसिएटेड एजेन्सीज, सी-5, लाल कोठी शॉपिंग सैन्टर, टौंक रोड, जयपुर (राजस्थान) | 1417 : 1999 स्वर्णाभूषणों की हॉलमार्किंग |
| 29. | 8846605 | 26-07-2007 | मैसर्स आदित्य एसोसिएटेड एजेन्सीज, सी-5, लाल कोठी शॉपिंग सैन्टर, टौंक रोड, जयपुर (राजस्थान) | 2112 : 2003 रजत आभूषणों की हॉलमार्किंग |

[स. सी एम डी/13 : 11]
ए. के. तलवार उप-महानिदेशक (मुहर)

New Delhi, the 17th September, 2007

S.O. 2686.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following Schedule.

SCHEDULE

| Sl. No. | Licence No. (CM/L-) | Operative Date | Name and Address of the Licensee | Article/Process Covered by the licences and the relevant IS : Designation |
|-------------|---------------------|----------------|---|---|
| (1) | (2) | (3) | (4) | (5) |
| August 2007 | | | | |
| 1. | 8846403 | 26-07-2007 | M/s. Galaxy Concab (I) Pvt. Ltd., G-164-I64 A, Sitapura Industrial Area, Jaipur, Rajasthan | 1554 (Part 1) : 1988 PVC Insulated (HD) Cables |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|------------|---|--|
| 2. | 8846302 | 26-07-2007 | M/s. Galaxy Concab (I) Pvt. Ltd., G-164-164 A Sitapura Industrial Area, Jaipur, Rajasthan | 7098 (Part I) : 1988 XLPE Insulated PVC Cables |
| 3. | 8848003 | 31-07-2007 | M/s. Ishwar Cables (Pvt.) Ltd., F-661, Road No. 9F2, V. K. I. Area Jaipur-302 013, Rajasthan | 694:1990 PV Insulated Cables |
| 4. | 8848104 | 31-07-2007 | M/s. Ishwar Cables (Pvt.) Ltd., F-661, Road No. 9F2, V. K. I. Area Jaipur- 302 013 Rajasthan | 7098 (Part) : 1988 XL PE Insulated Cables |
| 5. | 8848205 | 31-07-2007 | M/s. Ishwar Cables (Pvt.) Ltd., F-661, Road No. 9F2, V. K. I. Area Jaipur-302 013, Rajasthan | 1554 (Part 1) : 1988 PVC Insulated (HD) Cables |
| 6. | 8847708 | 31-07-2007 | M/s. Bharat Polychem Industries, F-334, Mewar Industrial Area, Madri, Udaipur-313 001 Rajasthan | 9537 (Part 3) : 1983 Rigid PVC Conduits for Insulation Materials |
| 7. | 8847910 | 31-07-2007 | M/s. Bonton Cables Pvt. Ltd., A-114-115, RIICO Industrial Area, Phase-I, Bhiwadi, Distt. Alwar-301 019, Rajasthan | 694:1990 PVC Insulated Cables |
| 8. | 8848710 | 03-08-2007 | M/s. Chaplot Jewellers, 1st Floor, Dwarkesh Market, Bus Stand, Rajsamand, Distt. Kankroli-313 324, Rajasthan | 2112:2003 Hallmarking of Silver Jewellery |
| 9. | 8849106 | 08-08-2007 | M/s. Swastik Tiles, F-660-661 A, North Extension, Matsya Industrial Area, Alwar, Rajasthan | 13801:1993 Chequered Cement Concrete Tiles |
| 10. | 8849611 | 08-08-2007 | M/s. New Ambica Jewellers Opp. Lunkaro Ki Pole, Bheru Bazar, Balotra, Distt. Barmer-344 022, Rajasthan | 1417:1999 Hallmarking of Gold Jewellery |
| 11. | 8849005 | 08-08-2007 | M/s. Swastik Tiles, F-660-661 A, North Extension Matsya Industrial Area Alwar, Rajasthan | 1237:1980 Cement Concrete Flooring Tiles |
| 12. | 8850087 | 09-08-2007 | M/s. Furcon Engineers Corporation, F-383, Road No. 09-F, Vishwa Karma Industrial Area, Jaipur—302 013, Rajasthan | 7098 (Part 1):1988 XLPE Insulated PVC Cables |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|------------|--|--|
| 13. | 8850794 | 10-08-2007 | M/s. Jitendra Industries, F-207, Mandia Road, Near DIC Office, Pali-Marwar, Distt. Pali-306401, Rajasthan | 14151 (Part 2):1999 QCPE Pipes |
| 14. | 8850592 | 09-08-2007 | M/s. Ishwar Metal Industries, F-79 B, Road No. 6, V.K. I. Area, Jaipur-302013, Rajasthan | 1554 (Part 1): 1988 PVC Insulated (HD) Cables |
| 15. | 8850491 | 09-08-2007 | M/s. Ishwar Metal Industries, F-79 B, Road No. 6, V.K. I. Area, Jaipur-302013, Rajasthan | 14255:1995 Aerial Bunched Cables |
| 16. | 8850693 | 09-08-2007 | M/s. Ishwar Metal Industries, F-79 B, Road No. 6, V.K. I. Area, Jaipur-302013, Rajasthan | 7098 (Part 1): 1988 XLPE Insulated PVC Cables |
| 17. | 8851796 | 16-08-2007 | M/s. Shree Agrasen Industries, F-293 (A), Road No. 14, V.K. I. Area, Jaipur-302013, Rajasthan | 398 (Part 2): 1996 ACSR |
| 18. | 8852394 | 16-08-2007 | M/s. Vaishnav Packaged Drinking, Water, P. Nos. 13 & 14, Mandalda, Distt. Chittorgarh, Rajasthan | 14543:2004 Packaged Drinking Water |
| 19. | 8852596 | 13-08-2007 | M/s. Power Cables Industries, G-I/801, Sitapura Industrial Area, Jaipur-302022, Rajasthan | 7098 (Part 1): 1988 XLPE Insulated PVC Cables |
| 20. | 8852701 | 17-08-2007 | M/s. Siddha Cements Pvt. Ltd., F-55, 56, 57, G-101, 102, 103, RIICO Industrial Area, Behror, Distt. Alwar, Rajasthan | 8112:1989 43 Grade OPC |

| (1) | (2) | (3) | (4) | (5) |
|-----|---------|------------|---|--|
| 21. | 8852697 | 17-08-2007 | M/s. Sailesh Cement Udyog Pvt. Ltd. A-21 B, RIICO Industrial Area Behror Distt. Alwar-301 701 Rajasthan | 8112:1989 43 Grade OPC |
| 22. | 8853093 | 21-08-2007 | M/s. Santosh Udyog F-727, Road No. 9-F-3 V.K. I. Area Jaipur-302013 Rajasthan | 8794:1988 CID Joints |
| 23. | 8852903 | 17-08-2007 | M/s. D.S. Industries F-424 (A), Marodhar Industrial Area Phase-II Basni Jodhpur-342003 Rajasthan | 9537 (Part 3):1983 Rigid Plain Conduits for Insulating Materials |
| 24. | 8853396 | 21-08-2007 | M/s. Jaipur Wires & Cables G-509B, Road, No. 9A V.K.I. Area, Jaipur-302 013 Rajasthan | 694:1990 PVC Insulated Cables |
| 25. | 8853602 | 22-08-2007 | M/s. Navratan Pipe & Profile Ltd. SP-6, RIICO Industrial Area Khushkhera Alwar Rajasthan | 1239 (Part 1):2004 Mild Steel Tubes |
| 26. | 8854196 | 22-08-2007 | M/s. Suryansh Electrical Industries F-255A, Road No. 13 V.K.I. Area, Jaipur-302 013 Rajasthan | 14255:1995 Aerial Bunched Cables |
| 27. | 8854297 | 22-08-2007 | M/s. Jayanti Cold Storage Rajgarh Road Village Dadar Distt. Alwar-301 001 Rajasthan | 14543:2004 Packaged Drinking Water |
| 28. | 8846504 | 26-07-2007 | M/s. Aditya Associated Agencies C-5 Lalkothi Shopping Centre Tonk Road Jaipur-302 015 Rajasthan | 1417:1999 Hallmarking of Gold Jewellery |
| 29. | 8846605 | 26-07-2007 | M/s. Aditiya Associated Agencies C-5 Lalkothi Shopping Centre, Tonk Road Jaipur-302 015 Rajasthan | 2112:2003 Hallmarking of Silver Jewellery |

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 14 सितम्बर, 2007

का.आ. 2687.—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक व्यूरो द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

| क्रम सं. | लाइसेंस संख्या सीएम/एल- | लाइसेंसधारी का नाम व पता | लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक | रद्द/स्थगित करने की तिथि |
|----------|----------------------------|--|--|-----------------------------|
| (1) | (2) | (3) | (4) | (5) |
| 1 | 7736892 | श्री कृष्ण इंटरप्राइजेज डब्ल्यू-17, एमआइडीसी परभणी-431401 | भासा 14543:2004 पैकेजर्ड पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा) | 2-8-2007 |

[संख्या सीएमडी/13:13]

ए. के. तलवार, उप-महानिदेशक (मुहर)

New Delhi, the 14th September, 2007

S.O. 2687.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each.

SCHEDULE

| S. No. | Licence No. | Name and Address of the Licensee | Article/Process with relevant Indian Standards covered by the licence cancelled | Date of cancellation |
|--------|-------------|---|---|----------------------|
| (1) | (2) | (3) | (4) | (5) |
| 1 | 7736892 | Shri Krishna Enterprises W-17, MIDC Parbhani 431401 | IS 14543:2004 Packaged drinking water (Other than packaged natural mineral water) | 2-8-2007 |

[No. CMD/13:13]

A. K. TALWAR, Dy. Director General (Marks)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2688.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 5019 तारीख 28 दिसम्बर 2006 द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और सक्षम अधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करते के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए घोषणा करती है कि पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उस धारा की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार उस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय, सभी विलंगामों से मुक्त, असम गैस कम्पनी लि. में होगा।

अनुसूची

जिला : गोलाघाट

राज्य : असम

| क्रम नं. | गांव का नाम | सर्कल | मौजा | पट्टा नं. | दाग नं. | क्षेत्रफल | | | |
|-------------|----------------------|-----------|---------------|---|--|---|--|---|---|
| | | | | | | बीघा | कट्टा | लुसा | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | |
| 1. | लेटेकु छापरी गांव | खुमटाइ | खुमटाइ | सरकार एकसना पन्ना मियादी पट्टा नं. 1 मियादी पट्टा नं. 4 कुल : | 26 35 73 143 1 | 0 0 0 0 3 | 2 1 2 1 6 | 8 4 15 19 6 | |
| 2. | छेवनीगांव (भाग 1) | खुमटाइ | रंगमाटी | मियादी पट्टा नं. 51 मियादी पट्टा नं. 11 मियादी पट्टा नं. 51 मियादी पट्टा नं. 105 सरकार मियादी पट्टा नं. 31 मियादी पट्टा नं. 74 मियादी पट्टा नं. 57 मियादी पट्टा नं. 57 मियादी पट्टा नं. 31 मियादी पट्टा नं. 9 मियादी पट्टा नं. 102 मियादी पट्टा नं. 131 मियादी पट्टा नं. 33 मियादी पट्टा नं. 75 मियादी पट्टा नं. 12 मियादी पट्टा नं. 77 सरकार मियादी पट्टा नं. 57 सरकार कुल : | 296 298 302 303 304 305 320 324 334 335 336 332 339 340 341 342 381 1014 1095 1137 2 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 | 0 0 0 2 0 0 1 0 0 0 0 0 0 0 1 0 0 0 | 0 0 0 4 3 10 4 2 17 0 7 8 8 9 11 8 7 3 12 2 2 19 2 5 | 7 3 10 4 2 17 0 7 8 8 9 11 8 7 3 12 2 2 19 3 |
| 3. | लेटेकु | छापरीगांव | मोरंगी मारंगी | सरकार सरकार सरकार कुल : | 1 5 18 | 5 0 0 | 1 1 1 | 4 6 13 | |

[सं. ओ-12016/69/2006/ओ एन जीडी-III]

श्री प्रकाश, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 12th September, 2007

S.O. 2688.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural gas S. O. 5019 dated 28th December, 2006 under sub section 3 of Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act 1962, (50 of 1962) the Central Government declared its intention to acquire the right of user in land specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub section 1 of Section 6 of the said Act, submitted report to the Government.

And further whereas the Central Government has after considering the said report, decided to acquired the right of user in lands specified in the Schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub section (1) of the Section (6) of the said Act, the Central Govt. hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub section (4) of that section, the Central Govt. directs that right of user in the said lands shall instead of vesting in the Central Govt. vests on this date of publication of the declaration in the Assam Gas Company Limited free from encumbrances.

SCHEDULE

District-Golaghat

State-Assam

| Sl. No. | Name of village | Circle | Mouza | Patta No. | Dag No. | B | Area K | Remarks L |
|------------|---------------------------|---------|-----------|--|---|--|--|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1. | Leteku Chapari Gaon | Khumtai | Khumtai | Waste land Annual P. P. No. 1 P. P. No. 4 | 26 35 73 143 | 0 0 0 0 | 2 1 2 1 | 8 4 15 19 |
| | | | | Total Area | | 1 | 3 | 6 |
| 2. | Chewni Gaon (1st Part) | Khumtai | Rangamati | P. P. No. 51 P. P. No. 11 P. P. No. 51 P. P. No. 105 Waste land P. P. No. 31 P. P. No. 74 P. P. No. 57 P. P. No. 57 P. P. No. 31 P. P. No. 9 P. P. No. 102 P. P. No. 131 P. P. No. 33 P. P. No. 75 P. P. No. 12 P. P. No. 77 Waste land P. P. No. 57 Waste land | 296 298 302 303 304 305 320 324 334 335 336 337 339 340 341 342 381 1014 1095 1137 | 0 | 0 0 0 2 0 0 1 0 0 0 0 0 0 0 1 0 0 0 0 0 | 7 3 10 4 2 17 0 7 6 8 8 9 11 8 7 3 12 2 2 19 |
| | | | | Total Area- | | 2 | 2 | 5 |
| 3. | Leteku Chapari Gaon | Marangi | Marangi | Waste land Waste land Waste land | 1 5 18 | 5 0 0 | 1 1 1 | 4 6 13 |
| | | | | Total Area- | | 5 | 4 | 3 |

[No.O-12016/69/2006/ONGD-III]

SHRI PRAKASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2689.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 5018 तारीख 28 दिसम्बर 2006 द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और सक्षम अधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए घोषणा करती है कि पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उस धारा की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार उस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय, सभी विल्लंगमों से मुक्त, असम गैस कम्पनी लि. में होगा।

अनुसूची

जिला : डिब्रूगढ़

राज्य : असम

| क्रम नं. | गांव का नाम (2) | सरकाल (3) | मौजा (4) | पट्टा नं. (5) | दाग नं. (6) | क्षेत्रफल | | |
|-------------|---------------------------------|--------------|-------------|---|--|--|--|--|
| | | | | | | बीघा (7) | कट्टा (8) | लुसा (9) |
| 1. | जालानी टी. इ. ग्रांट 263-283 | टेंगाखाट | टिपलींग | 263 एन.एल आर 263 एन.एल आर | 25 26 | 0 2 | 1 0 | 0 11 |
| | | | | कुल : | | 2 | 1 | 11 |
| 2. | 1 नं बरपथार गांव | टेंगाखाट | टिपलींग | मियादी पट्टा नं. 26 मियादी पट्टा नं. 6 मियादी पट्टा नं. 38 मियादी पट्टा नं. 61 सरकार सरकार मियादी पट्टा नं. 15 मियादी पट्टा नं. 1 मियादी पट्टा नं. 59 मियादी पट्टा नं. 72 मियादी पट्टा नं. 72 मियादी पट्टा नं. 122 सरकार मियादी पट्टा नं. 19 | 220 232 233 245 246 297 298 363 366 367 368 369 370 414 | 2 1 1 0 0 0 0 0 0 0 0 0 0 1 | 4 2 0 3 2 0 2 0 2 0 1 0 0 1 | 4 16 9 8 10 5 18 6 19 15 0 16 5 8 |
| | | | | कुल : | | 9 | 3 | 19 |
| 3. | 1 नं नवहोलिया गांव | टेंगाखाट | टिपलींग | मियादी पट्टा नं. 8 मियादी पट्टा नं. 13 सरकार मियादी पट्टा नं. 8 मियादी पट्टा नं. 47 मियादी पट्टा नं. 61 मियादी पट्टा नं. 120 मियादी पट्टा नं. 60 | 2 8 10 11 12 13 14 15 | 0 0 0 0 0 0 0 0 | 0 4 0 1 1 1 0 2 | 16 2 15 15 7 8 3 17 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|------------------|----------|-----------|----------------------|-----|-----|-----|-----|
| 3.1 | नं नवहोलिया गांव | टेंगाखाट | टिप्पलींग | मियादी पट्टा नं. 97 | 17 | 0 | 3 | 18 |
| | | | | मियादी पट्टा नं. 42 | 21 | 0 | 3 | 5 |
| | | | | मियादी पट्टा नं. 43 | 23 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 42 | 24 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 5 | 25 | 0 | 1 | 19 |
| | | | | सरकार | 26 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 11 | 27 | 0 | 2 | 13 |
| | | | | मियादी पट्टा नं. 19 | 32 | 0 | 2 | 3 |
| | | | | मियादी पट्टा नं. 52 | 33 | 0 | 2 | 17 |
| | | | | मियादी पट्टा नं. 36 | 36 | 0 | 2 | 2 |
| | | | | मियादी पट्टा नं. 25 | 37 | 0 | 1 | 3 |
| | | | | मियादी पट्टा नं. 1 | 40 | 0 | 1 | 15 |
| | | | | मियादी पट्टा नं. 69 | 41 | 0 | 4 | 14 |
| | | | | मियादी पट्टा नं. 130 | 49 | 0 | 3 | 0 |
| | | | | कुल : | | 4 | 4 | 18 |
| 4. | हुकुता गांव | टेंगाखाट | टिप्पलींग | सरकार | 12 | 0 | 0 | 10 |
| | | | | मियादी पट्टा नं. 28 | 36 | 0 | 3 | 11 |
| | | | | मियादी पट्टा नं. 47 | 38 | 1 | 0 | 18 |
| | | | | मियादी पट्टा नं. 1 | 45 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 100 | 46 | 0 | 1 | 11 |
| | | | | सरकार | 61 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 2 | 62 | 0 | 3 | 2 |
| | | | | मियादी पट्टा नं. 1 | 71 | 0 | 1 | 9 |
| | | | | मियादी पट्टा नं. 50 | 72 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 21 | 73 | 0 | 2 | 7 |
| | | | | मियादी पट्टा नं. 62 | 76 | 0 | 1 | 1 |
| | | | | मियादी पट्टा नं. 68 | 77 | 0 | 2 | 3 |
| | | | | मियादी पट्टा नं. 62 | 78 | 0 | 0 | 6 |
| | | | | मियादी पट्टा नं. 31 | 262 | 0 | 4 | 15 |
| | | | | मियादी पट्टा नं. 64 | 263 | 0 | 2 | 7 |
| | | | | मियादी पट्टा नं. 18 | 265 | 0 | 0 | 16 |
| | | | | मियादी पट्टा नं. 5 | 266 | 0 | 2 | 11 |
| | | | | मियादी पट्टा नं. 56 | 267 | 0 | 2 | 11 |
| | | | | मियादी पट्टा नं. 76 | 268 | 0 | 1 | 12 |
| | | | | मियादी पट्टा नं. 11 | 269 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 60 | 270 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 68 | 271 | 0 | 1 | 14 |
| | | | | सरकार | 272 | 0 | 0 | 8 |
| | | | | मियादी पट्टा नं. 43 | 324 | 0 | 0 | 8 |
| | | | | एकासना | 326 | 0 | 1 | 18 |
| | | | | मियादी पट्टा नं. 102 | 327 | 0 | 2 | 0 |
| | | | | सरकार | 328 | 0 | 3 | 9 |
| | | | | एकासना | 329 | 0 | 0 | 5 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--------------------------|----------|----------|---------------------|-----|-----|-----|-----|
| 4. | हुकुता गांव | टेंगाखाट | टिपलींग | एकासना | 330 | 0 | 0 | 5 |
| | | | (-जारी-) | एकासना | 332 | 0 | 0 | 16 |
| | | | | सरकार | 347 | 0 | 2 | 0 |
| | | | | सरकार | 348 | 0 | 2 | 18 |
| | | | | एकासना | 349 | 0 | 0 | 4 |
| | | | | सरकार | 352 | 0 | 0 | 19 |
| | | | | एकासना | 426 | 1 | 2 | 0 |
| | | | | एकासना | 426 | 1 | 2 | 0 |
| | | | | एकासना | 428 | 0 | 2 | 12 |
| | | | | मियादी पट्टा नं. 89 | 429 | 0 | 3 | 16 |
| | | | | मियादी पट्टा नं. 28 | 432 | 0 | 2 | 16 |
| | | | | | 433 | 0 | 0 | 3 |
| | | | | कुल : | | 14 | 4 | 8 |
| 5. | ड-हुकुता गांव | टेंगाखाट | टिपलींग | मियादी पट्टा नं. 1 | 177 | 0 | 1 | 15 |
| | | | | मियादी पट्टा नं. 34 | 179 | 0 | 2 | 17 |
| | | | | चाह मियादी नं. 1 | 180 | 0 | 3 | 16 |
| | | | | मियादी पट्टा नं. 34 | 182 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 31 | 183 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 29 | 184 | 0 | 3 | 1 |
| | | | | मियादी पट्टा नं. 41 | 215 | 0 | 0 | 4 |
| | | | | मियादी पट्टा नं. 32 | 217 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 2 | 218 | 0 | 1 | 8 |
| | | | | मियादी पट्टा नं. 2 | 221 | 0 | 3 | 10 |
| | | | | सरकार | 222 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 30 | 223 | 0 | 0 | 7 |
| | | | | कुल : | | 3 | 3 | 1 |
| 6. | जालानी 15 नं आवेदन भाग 1 | टेंगाखाट | टिपलींग | मियादी पट्टा नं. | 40 | 7 | 1 | 4 |
| | | | | सरकार | 96 | 0 | 0 | 15 |
| | | | | सरकार | 97 | 0 | 0 | 6 |
| | | | | सरकार | 98 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 27 | 126 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 1 | 127 | 0 | 1 | 16 |
| | | | | मियादी पट्टा नं. 26 | 144 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 34 | 162 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 34 | 163 | 1 | 3 | 12 |
| | | | | कुल : | | 10 | 0 | 2 |
| 7. | नलानी पथर | टेंगाखाट | टिपलींग | सरकार | 38 | 0 | 0 | 13 |
| | | | | सरकार | 42 | 1 | 0 | 19 |
| | | | | एकासना | 43 | 1 | 2 | 18 |
| | | | | सरकार | 49 | 0 | 0 | 6 |
| | | | | सरकार | 50 | 1 | 0 | 8 |
| | | | | सरकार | 52 | 0 | 0 | 3 |
| | | | | सरकार | 81 | 0 | 3 | 10 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--|------------|-----------|--------------------|-----|-----|-----|-----|
| 7. | नलानी | टेंगाखाट | टिप्पलींग | सरकार | 83 | 0 | 2 | 4 |
| | | | (जारी) | मियादी पट्टा नं. 1 | 84 | 0 | 1 | 6 |
| | | | | सरकार | 85 | 0 | 1 | 0 |
| | | | | मियादी पट्टा नं. 1 | 86 | 0 | 2 | 15 |
| | | | | एकासना | 90 | 1 | 3 | 12 |
| | | | | सरकार | 91 | 0 | 0 | 4 |
| | | | | सरकार | 146 | 0 | 0 | 15 |
| | | | | सरकार | 164 | 0 | 1 | 17 |
| | | | | सरकार | 170 | 1 | 0 | 3 |
| | | | | सरकार | 176 | 2 | 1 | 9 |
| | | | | कुल : | 11 | 4 | 2 | |
| 8. | जालानी टी. ह. 1897-98 आवेदन नं. 81 | टेंगाखाट | टिप्पलींग | सरकार | 46 | 0 | 4 | 19 |
| | | | | मियादी पट्टा नं. 4 | 47 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 2 | 48 | 1 | 1 | 5 |
| | | | | मियादी पट्टा नं. 2 | 49 | 2 | 2 | 15 |
| | | | | सरकार | 50 | 0 | 0 | 7 |
| | | | | सरकार | 52 | 1 | 0 | 2 |
| | | | | कुल : | 5 | 1 | 5 | |
| 9. | जालानी टी. ह. 250 एन.एल आर ग्रांट | टेंगाखाट | टिप्पलींग | 259 एन.एल आर | 3 | 1 | 2 | 6 |
| | | | | 259 एन.एल आर | 5 | 0 | 1 | 17 |
| | | | | 259 एन.एल आर | 6 | 0 | 0 | 4 |
| | | | | 259 एन.एल आर | 13 | 0 | 0 | 3 |
| | | | | 259 एन.एल आर | 14 | 1 | 4 | 2 |
| | | | | सरकार | 15 | 1 | 4 | 17 |
| | | | | कुल : | 5 | 3 | 9 | |
| 10. | डेहिंगकिनार बंदधारी | नाहारकटिया | जोयपुर | सरकार | 24 | 0 | 0 | 10 |
| | | | | सरकार | 56 | 0 | 2 | 15 |
| | | | | एकासना | 60 | 0 | 0 | 14 |
| | | | | एकासना | 61 | 0 | 0 | 14 |
| | | | | एकासना | 62 | 0 | 2 | 2 |
| | | | | एकासना | 63 | 0 | 0 | 2 |
| | | | | सरकार | 74 | 0 | 0 | 10 |
| | | | | सरकार | 75 | 0 | 0 | 8 |
| | | | | सरकार | 76 | 0 | 0 | 2 |
| | | | | एकासना | 77 | 0 | 2 | 9 |
| | | | | एकासना | 78 | 0 | 1 | 11 |
| | | | | एकासना | 79 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 3 | 81 | 0 | 0 | 2 |
| | | | | सरकार | 82 | 0 | 0 | 2 |
| | | | | सरकार | 83 | 0 | 2 | 1 |
| | | | | सरकार | 86 | 0 | 0 | 6 |
| | | | | एकासना | 92 | 1 | 0 | 14 |
| | | | | एकासना | 93 | 0 | 0 | 8 |
| | | | | एकासना | 94 | 1 | 0 | 3 |
| | | | | सरकार | 95 | 0 | 0 | 10 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|------------------------|------------|--------------------|--|---|--|--|---|
| 10. | डिहिंगकिनार नंदधारी | नाहारकटिया | जोयपुर (-जारी;) | एकासना एकासना सरकार सरकार मियादी पट्टा नं. 14 सरकार सरकार एकासना सरकार सरकार | 96 97 98 99 101 102 103 104 105 304 | 0 0 0 0 0 0 0 0 0 0 | 3 3 1 0 4 0 0 0 0 2 | 13 17 16 2 2 2 6 2 10 2 |
| | | | | कुल : | | 8 | 3 | 2 |
| 11. | हाथीगढ़ ब्लॉक | नाहारकटिया | जोयपुर | सरकार सरकार एकासना एकासना एकासना एकासना एकासना मियादी पट्टा नं. 9 | 69 70 74 83 84 86 87 89 | 0 0 0 0 0 0 1 0 | 3 1 2 4 1 1 0 1 | 2 12 5 7 18 14 4 0 |
| | | | | कुल : | | 4 | 1 | 2 |
| 12. | टिप्पिंग बंदधारी | नाहारकटिया | जोयपुर | मियादी पट्टा नं. 92 मियादी पट्टा नं. 92 मियादी पट्टा नं. 92 सरकार सरकार सरकार मियादी पट्टा नं. 92 मियादी पट्टा नं. 122 मियादी पट्टा नं. 19 मियादी पट्टा नं. 92 मियादी पट्टा नं. 1 मियादी पट्टा नं. 27 एकासना सरकार एकासना एकासना सरकार | 4 5 6 7 8 9 13 17 19 20 22 23 24 25 26 27 267 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 | 1 0 0 1 0 0 4 0 1 4 0 2 1 4 0 0 0 1 | 6 14 10 17 11 18 16 2 9 13 8 11 10 5 17 8 4 |
| | | | | कुल : | | 5 | 2 | 9 |

[सं. ओ-12016/69/2006/ओ एनजीडी-III]

श्री प्रकाश, अवर सचिव

New Delhi, the 12th September, 2007

S.O. 2689.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural gas S.O. 5018 dated 28th December, 2006 under sub-section 3 of Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act 1962, (50 of 1962) the Central Government declared its intention to acquire the right of user in land specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub-section 1 of Section 6 of the said Act, submitted report to the Government.

And further whereas the Central Government has after considering the said report, decided to acquire the right of user in lands specified in the Schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub section (1) of the Section (6) of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub section (4) of that section, the Central Government directs that right user in the said lands shall instead of vesting in the Central Government vest on this date of publication of the declaration in Assam Gas Company Limited free from encumbrances.

SCHEDULE

District : Dibrugarh

State : Assam

| Sl. No. | Name of Village | Circle | Mouza | Patta No. | Dag No. | Area | | | Remarks |
|------------|--------------------|-----------|---------|---------------------|------------|----------|----------|-----------|---------|
| | | | | | | B | K | L | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | |
| 1. | Jalani T.E. | Tengakhat | Tipling | 263 N.L.R. | 25 | 0 | 1 | 0 | |
| | Grant No. 263-282 | | | 263 N.L.R. | 26 | 2 | 0 | 11 | |
| | | | | Total Area : | | 2 | 1 | 11 | |
| 2. | 1 No. Borpathar | Tengakhat | Tipling | P.P. No. 26 | 220 | 2 | 4 | 4 | |
| | gaon | | | P.P. No. 6 | 232 | 1 | 2 | 16 | |
| | | | | P.P. No. 38 | 233 | 1 | 0 | 9 | |
| | | | | P.P. No. 61 | 245 | 0 | 3 | 8 | |
| | | | | Waste land | 246 | 0 | 2 | 10 | |
| | | | | Waste land | 297 | 0 | 0 | 5 | |
| | | | | P.P. No. 15 | 298 | 0 | 2 | 18 | |
| | | | | P.P. No. 1 | 363 | 0 | 0 | 6 | |
| | | | | P.P. No. 59 | 366 | 0 | 2 | 19 | |
| | | | | P.P. No. 72 | 367 | 0 | 0 | 15 | |
| | | | | P.P. No. 72 | 368 | 0 | 1 | 0 | |
| | | | | P.P. No. 122 | 369 | 0 | 0 | 16 | |
| | | | | Waste land | 370 | 0 | 0 | 5 | |
| | | | | P.P. No. 19 | 414 | 1 | 1 | 8 | |
| | | | | Total Area : | | 9 | 3 | 19 | |
| 3. | 1 No. Nawholiya | Tengakhat | Tipling | P.P. No. 8 | 2 | 0 | 0 | 16 | |
| | gaon | | | P.P. No. 13 | 8 | 0 | 4 | 2 | |
| | | | | Waste land | 10 | 0 | 0 | 15 | |
| | | | | P.P. No. 8 | 11 | 0 | 1 | 15 | |
| | | | | P.P. No. 47 | 12 | 0 | 1 | 7 | |
| | | | | P.P. No. 61 | 13 | 0 | 1 | 8 | |
| | | | | P.P. No. 120 | 14 | 0 | 0 | 3 | |
| | | | | P.P. No. 60 | 15 | 0 | 2 | 17 | |
| | | | | P.P. No. 97 | 17 | 0 | 3 | 18 | |
| | | | | P.P. No. 42 | 21 | 0 | 3 | 5 | |
| | | | | P.P. No. 43 | 23 | 0 | 1 | 4 | |
| | | | | P.P. No. 42 | 24 | 0 | 0 | 15 | |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|-----------------|-----------|---------|---------------------|-----|-----------|----------|-----------|
| 3. | 1 No.Nawholiday | Tengakhat | Tipling | P.P. No. 5 | 25 | 0 | 1 | 19 |
| | gaon | | | Waste land | 26 | 0 | 0 | 7 |
| | | | | P.P. No. 11 | 27 | 0 | 2 | 13 |
| | | | | P.P. No. 19 | 32 | 0 | 2 | 3 |
| | | | | P.P. No. 52 | 33 | 0 | 2 | 17 |
| | | | | P.P. No. 36 | 36 | 0 | 2 | 2 |
| | | | | P.P. No. 25 | 37 | 0 | 1 | 3 |
| | | | | P.P. No. 1 | 40 | 0 | 1 | 15 |
| | | | | P.P. No. 69 | 41 | 0 | 4 | 14 |
| | | | | P.P. No. 130 | 49 | 0 | 3 | 0 |
| | | | | Total Area : | | 4 | 4 | 18 |
| 4. | Hukuta gaon | Tengakhat | Tipling | Waste land | 12 | 0 | 0 | 10 |
| | | | | P.P. No. 28 | 36 | 0 | 3 | 11 |
| | | | | P.P. No. 47 | 38 | 1 | 0 | 18 |
| | | | | P.P. No. 1 | 45 | 0 | 0 | 17 |
| | | | | P.P. No. 100 | 46 | 0 | 1 | 11 |
| | | | | Waste land | 61 | 0 | 1 | 2 |
| | | | | P.P. No. 2 | 62 | 0 | 3 | 2 |
| | | | | P.P. No. 1 | 71 | 0 | 1 | 9 |
| | | | | P.P. No. 50 | 72 | 0 | 0 | 15 |
| | | | | P.P. No. 21 | 73 | 0 | 2 | 7 |
| | | | | P.P. No. 62 | 76 | 0 | 1 | 1 |
| | | | | P.P. No. 68 | 77 | 0 | 2 | 3 |
| | | | | P.P. No. 62 | 78 | 0 | 0 | 6 |
| | | | | P.P. No. 31 | 262 | 0 | 4 | 15 |
| | | | | P.P. No. 64 | 263 | 0 | 2 | 7 |
| | | | | P.P. No. 18 | 265 | 0 | 0 | 16 |
| | | | | P.P. No. 5 | 266 | 0 | 2 | 11 |
| | | | | P.P. No. 56 | 267 | 0 | 2 | 11 |
| | | | | P.P. No. 76 | 268 | 0 | 1 | 12 |
| | | | | P.P. No. 11 | 269 | 0 | 0 | 18 |
| | | | | P.P. No. 60 | 270 | 0 | 0 | 15 |
| | | | | P.P. No. 68 | 271 | 0 | 1 | 14 |
| | | | | Waste land | 272 | 0 | 0 | 8 |
| | | | | P.P. No. 43 | 324 | 0 | 0 | 8 |
| | | | | Annual | 326 | 0 | 1 | 18 |
| | | | | P.P. No. 102 | 327 | 0 | 2 | 0 |
| | | | | Waste land | 328 | 0 | 3 | 9 |
| | | | | Annual | 329 | 0 | 0 | 5 |
| | | | | Annual | 330 | 0 | 0 | 5 |
| | | | | Annual | 332 | 0 | 0 | 16 |
| | | | | Waste land | 347 | 0 | 2 | 0 |
| | | | | Waste land | 348 | 0 | 2 | 18 |
| | | | | Annual | 349 | 0 | 0 | 4 |
| | | | | Waste land | 352 | 0 | 0 | 19 |
| | | | | Annual | 426 | 1 | 2 | 0 |
| | | | | Annual | 428 | 0 | 2 | 12 |
| | | | | P.P. No. 89 | 429 | 0 | 3 | 16 |
| | | | | P.P. No. 28 | 432 | 0 | 2 | 16 |
| | | | | | 433 | 0 | 0 | 3 |
| | | | | Total Area : | | 14 | 4 | 8 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--|-----------------------|-----|--|--|--|--|---|
| 5. | Da-Hukuta gaon | Tengakhat Tippling | | P.P. No. 1 P.P. No. 34 T.P. No. 1 P.P. No. 34 P.P. No. 31 P.P. No. 29 P.P. No. 41 P.P. No. 32 P.P. No. 2 P.P. No. 2 Waste land P.P. No. 30 | 177 179 180 182 183 184 215 217 218 221 222 223 | 0 0 0 0 0 0 0 0 0 0 0 0 | 1 2 2 0 0 3 0 0 1 3 0 0 | 15 17 16 5 9 1 4 18 8 10 11 7 |
| | | | | Total Area : | | 3 | 3 | 1 |
| 6. | Jalani 15 No. Application 1st Part | Tengakhat Tippling | | P.P. No. Waste land Waste land Waste land P.P. No. 27 P.P. No. 1 P.P. No. 26 P.P. No. 34 P.P. No. 34 | 40 96 97 98 126 127 144 162 163 | 7 0 0 0 0 0 0 0 1 | 1 0 0 0 0 1 0 0 3 | 4 15 6 15 9 16 7 18 12 |
| | | | | Total Area : | | 10 | 0 | 2 |
| 7. | Nalani Pather | Tengakhat Tippling | | Waste land Waste land Annual Waste land Waste land Waste land Waste land Waste land Waste land P.P. No. 1 Waste land P.P. No. 1 Annual Waste land Waste land Waste land Waste land Waste land | 38 42 43 49 50 52 81 83 84 85 86 90 91 146 164 170 176 | 0 1 1 0 1 0 0 0 0 0 0 1 0 0 0 1 0 2 | 0 0 2 0 0 0 3 2 1 1 2 3 0 0 0 1 0 10 4 3 15 12 0 8 3 10 4 6 15 17 3 9 | 13 19 18 6 8 3 10 4 6 0 15 12 4 15 17 3 9 |
| | | | | Total Area : | | 11 | 4 | 2 |
| 8. | Jalani T.E. 1897-98 81 No. Application | Tengakhat Tippling | | Waste land P.P. No. 4 P.P. No. 2 P.P. No. 2 Waste land Waste land | 46 47 48 49 50 52 | 0 0 1 2 0 1 | 4 0 1 2 0 0 | 19 17 5 15 7 2 |
| | | | | Total Area : | | 8 | 1 | 5 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|----------------|------------|---------|---------------------|----------|----------|----------|-----|
| 9. | Jalani T.E. | Tengakhat | Tipling | 259 No. N.L.R. | 3 | 1 | 2 | 6 |
| | | | | 259 No. N.L.R. | 5 | 0 | 1 | 17 |
| | | | Grant | 259 No. N.L.R. | 6 | 0 | 0 | 4 |
| | | | | 259 No. N.L.R. | 13 | 0 | 0 | 3 |
| | | | | 259 No. N.L.R. | 14 | 1 | 4 | 2 |
| | | | | Waste land | 15 | 1 | 4 | 17 |
| | | | | Total Area : | 5 | 3 | 9 | |
| 10. | Dehingkinar | Naharkatia | Joypore | Waste land | 24 | 0 | 0 | 10 |
| | Banhdhari | | | Waste land | 56 | 0 | 2 | 15 |
| | | | | Annual | 60 | 0 | 0 | 14 |
| | | | | Annual | 61 | 0 | 0 | 14 |
| | | | | Annual | 62 | 0 | 2 | 2 |
| | | | | Annual | 63 | 0 | 0 | 2 |
| | | | | Waste land | 74 | 0 | 0 | 10 |
| | | | | Waste land | 75 | 0 | 0 | 8 |
| | | | | Waste land | 76 | 0 | 0 | 2 |
| | | | | Annual | 77 | 0 | 2 | 9 |
| | | | | Annual | 78 | 0 | 1 | 11 |
| | | | | Annual | 79 | 0 | 0 | 5 |
| | | | | P.P. No. 3 | 81 | 0 | 0 | 2 |
| | | | | Waste land | 82 | 0 | 0 | 2 |
| | | | | Waste land | 83 | 0 | 2 | 1 |
| | | | | Waste land | 86 | 0 | 0 | 6 |
| | | | | Annual | 92 | 1 | 0 | 14 |
| | | | | Annual | 93 | 0 | 0 | 8 |
| | | | | Annual | 94 | 1 | 0 | 3 |
| | | | | Waste land | 95 | 0 | 0 | 10 |
| | | | | Annual | 96 | 0 | 3 | 13 |
| | | | | Annual | 97 | 0 | 3 | 17 |
| | | | | Waste land | 98 | 0 | 1 | 16 |
| | | | | Waste land | 99 | 0 | 0 | 2 |
| | | | | P.P. No. 14 | 101 | 0 | 4 | 2 |
| | | | | Waste land | 102 | 0 | 0 | 2 |
| | | | | Waste land | 103 | 0 | 0 | 6 |
| | | | | Annual | 104 | 0 | 0 | 2 |
| | | | | Waste land | 105 | 0 | 0 | 10 |
| | | | | Waste land | 304 | 0 | 2 | 2 |
| | | | | Total Area : | 8 | 3 | 2 | |
| 11. | Hatigarh Block | Naharkatia | Joypore | Waste land | 69 | 0 | 3 | 2 |
| | | | | Waste land | 70 | 0 | 1 | 12 |
| | | | | Annual | 74 | 0 | 2 | 5 |
| | | | | Annual | 83 | 0 | 4 | 7 |
| | | | | Annual | 84 | 0 | 1 | 18 |
| | | | | Annual | 86 | 0 | 1 | 14 |
| | | | | Annual | 87 | 1 | 0 | 4 |
| | | | | P.P. No. 9 | 89 | 0 | 1 | 0 |
| | | | | Total Area : | 4 | 1 | 2 | |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|----------------------|------------|---------|--------------|-----|-----|-----|-----|
| 12. | Tipling Banhdhari | Naharkatia | Joypore | P.P. No. 92 | 4 | 0 | 1 | 6 |
| | | | | P.P. No. 92 | 5 | 0 | 0 | 14 |
| | | | | P.P. No. 92 | 6 | 0 | 0 | 10 |
| | | | | Waste land | 7 | 0 | 1 | 17 |
| | | | | Waste land | 8 | 0 | 0 | 11 |
| | | | | Waste land | 9 | 0 | 0 | 18 |
| | | | | P.P. No. 92 | 13 | 0 | 4 | 6 |
| | | | | P.P. No. 122 | 17 | 0 | 0 | 2 |
| | | | | P.P. No. 19 | 19 | 0 | 1 | 9 |
| | | | | P.P. No. 92 | 20 | 0 | 4 | 13 |
| | | | | P.P. No. 1 | 22 | 0 | 0 | 8 |
| | | | | P.P. No. 27 | 23 | 0 | 2 | 11 |
| | | | | Annual | 24 | 0 | 1 | 10 |
| | | | | Waste land | 25 | 0 | 4 | 5 |
| | | | | Annual | 26 | 0 | 0 | 17 |
| | | | | Annual | 27 | 0 | 0 | 8 |
| | | | | Waste land | 267 | 0 | 1 | 4 |
| | | | | Total Area : | | 5 | 2 | 9 |

[No. O-12016/69/2006/ONGD-III]

SHRI PRAKASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2690.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 5017 तारीख 28 दिसम्बर, 2006 द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और सक्षम अधिकारी ने उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्तशक्ति का प्रयोग करते हुए घोषणा करती है कि पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उस धारा की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार उस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय, सभी विलंगमों से मुक्त, असम गैस कम्पनी लि. में होगा।

अनुसूची

जिला : जोरहाट

राज्य : असम

| क्रम नं. | गांव का नाम | सर्कल | मौजा | पट्टा नं. | दाग नं. | बीघा | कट्टा | लुसा |
|-------------|-------------|-------|-------|----------------------|---------|------|-------|------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1. | चेतिया गांव | टियोक | लहिंग | मियादी पट्टा नं. 86 | 83 | 0 | 0 | 13 |
| | | | | मियादी पट्टा नं. 120 | 88 | 0 | 2 | 10 |
| | | | | मियादी पट्टा नं. 120 | 89 | 0 | 4 | 12 |
| | | | | मियादी पट्टा नं. 120 | 90 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 209 | 99 | 0 | 0 | 3 |
| | | | | मियादी पट्टा नं. 135 | 100 | 0 | 2 | 2 |
| | | | | मियादी पट्टा नं. 30 | 101 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 86 | 102 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 102 | 111 | 0 | 1 | 3 |
| | | | | मियादी पट्टा नं. 27 | 112 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 120 | 113 | 0 | 1 | 3 |
| | | | | सरकार | 1265 | 0 | 0 | 7 |
| | | | | कुल : | | 3 | 0 | 5 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--------------------------------|----------|-----|----------------------|------|-----|-----|-----|
| 4. | कलाखोवा गांव जोरहाट (पूर्व) | चारीगांव | | मियादी पट्टा नं. 78 | 25 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 503 | 658 | 0 | 2 | 19 |
| | | | | मियादी पट्टा नं. 265 | 681 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 265 | 685 | 0 | 3 | 13 |
| | | | | मियादी पट्टा नं. 160 | 686 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 503 | 687 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 245 | 689 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 484 | 690 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 484 | 694 | 0 | 3 | 0 |
| | | | | मियादी पट्टा नं. 337 | 695 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 561 | 697 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 241 | 811 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 370 | 820 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 484 | 826 | 0 | 2 | 12 |
| | | | | मियादी पट्टा नं. 484 | 829 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 562 | 830 | 0 | 2 | 12 |
| | | | | मियादी पट्टा नं. 299 | 831 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 19 | 832 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 377 | 835 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 378 | 836 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 321 | 854 | 0 | 0 | 8 |
| | | | | मियादी पट्टा नं. 24 | 855 | 0 | 2 | 15 |
| | | | | मियादी पट्टा नं. 269 | 856 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 487 | 857 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 328 | 858 | 0 | 1 | 9 |
| | | | | मियादी पट्टा नं. 299 | 861 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 262 | 862 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 150 | 863 | 0 | 0 | 13 |
| | | | | मियादी पट्टा नं. 367 | 864 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 369 | 866 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 477 | 867 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 367 | 868 | 0 | 2 | 15 |
| | | | | मियादी पट्टा नं. 470 | 869 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 339 | 898 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 433 | 1020 | 0 | 3 | 10 |
| | | | | मियादी पट्टा नं. 471 | 1021 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 1 | 1059 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 1 | 1174 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 1 | 1219 | 0 | 2 | 17 |
| | | | | मियादी पट्टा नं. 1 | 1319 | 0 | 0 | 3 |
| | | | | मियादी पट्टा नं. 1 | 1320 | 0 | 1 | 14 |
| | | | | मियादी पट्टा नं. 1 | 1321 | 0 | 1 | 0 |
| | | | | मियादी पट्टा नं. 1 | 1322 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 1 | 1323 | 0 | 1 | 6 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--------------|----------------|----------|----------------------|------|-----|-----|-----|
| 4. | कलाखोवा गांव | जोरहाट | चारीगांव | मियादी पट्टा नं. 1 | 1325 | 0 | 1 | 0 |
| | | पूर्व | | सरकार | 1330 | 0 | 0 | 16 |
| | | | | मियादी पट्टा नं. 73 | 1338 | 1 | 0 | 6 |
| | | | | मियादी पट्टा नं. 203 | 1353 | 0 | 0 | 13 |
| | | | | मियादी पट्टा नं. 412 | 1354 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 203 | 1355 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 203 | 1357 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 478 | 1358 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 518 | 1398 | 1 | 0 | 6 |
| | | | | मियादी पट्टा नं. 233 | 1442 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 203 | 1445 | 0 | 1 | 9 |
| | | | | मियादी पट्टा नं. 203 | 1446 | 0 | 3 | 10 |
| | | | | मियादी पट्टा नं. 236 | 1447 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 364 | 1448 | 0 | 0 | 4 |
| | | | | मियादी पट्टा नं. 393 | 1449 | 0 | 1 | 8 |
| | | | | मियादी पट्टा नं. 15 | 1491 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 177 | 1492 | 0 | 0 | 4 |
| | | | | मियादी पट्टा नं. 474 | 1494 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 516 | 1498 | 0 | 1 | 18 |
| | | | | मियादी पट्टा नं. 222 | 1707 | 0 | 0 | 8 |
| | | | | मियादी पट्टा नं. 469 | 1708 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 10 | 1709 | 0 | 2 | 15 |
| | | | | मियादी पट्टा नं. 279 | 1711 | 0 | 0 | 12 |
| | | | | मियादी पट्टा नं. 222 | 1713 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 200 | 1714 | 0 | 0 | 13 |
| | | | | मियादी पट्टा नं. 428 | 1715 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 201 | 1716 | 0 | 1 | 4 |
| | | | | सरकार | 1725 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 1 | 1832 | 0 | 1 | 11 |
| | | | | मियादी पट्टा नं. 22 | 1921 | 0 | 0 | 3 |
| | | | कुल : | | 16 | 4 | 0 | |
| 5. | चेंगली गांव | जोरहाट (पूर्व) | चारीगांव | मियादी पट्टा नं. 105 | 26 | 0 | 0 | 4 |
| | | | | मियादी पट्टा नं. 88 | 27 | 0 | 1 | 8 |
| | | | | मियादी पट्टा नं. 283 | 28 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 315 | 29 | 0 | 0 | 10 |
| | | | | मियादी पट्टा नं. 455 | 30 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 455 | 31 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 105 | 32 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 454 | 33 | 0 | 0 | 7 |
| | | | | मियादी पट्टा नं. 105 | 34 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 463 | 35 | 0 | 1 | 15 |
| | | | | मियादी पट्टा नं. 7 | 89 | 0 | 1 | 0 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--------------|----------------|----------|----------------------|-----|-----|-----|-----|
| 5. | चेंगाली गांव | जोरहाट (पूर्व) | चारीगांव | मियादी पट्टा नं. 90 | 98 | 0 | 1 | 17 |
| | | | | मियादी पट्टा नं. 443 | 99 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 105 | 100 | 0 | 1 | 8 |
| | | | | मियादी पट्टा नं. 460 | 101 | 0 | 1 | 5 |
| | | | | मियादी पट्टा नं. 463 | 103 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 349 | 104 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 193 | 105 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 526 | 171 | 0 | 0 | 10 |
| | | | | मियादी पट्टा नं. 422 | 172 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 530 | 173 | 0 | 1 | 10 |
| | | | | मियादी पट्टा नं. 352 | 174 | 0 | 1 | 13 |
| | | | | कुल : | | 4 | 0 | 9 |

[सं. ओ-12016/69/2006/ओ एन जी डी-III]

श्री प्रकाश, अवर सचिव

New Delhi, the 12th September, 2007

S.O. 2690.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural gas S. O. 5017 dated 28th December, 2006 under sub section 3 of Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act 1962, (50 of 1962) the Central Government declared its intention to acquire the right of user in land specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub section 1 of Section 6 of the said Act, submitted report to the Government.

And further whereas the Central Government has after considering the said report, decided to acquire the right of user in lands specified in the Schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub section (1) of the Section (6) of the said Act, the Central Govt. hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub section (4) of that section, the central Govt. directs that right user in the said lands shall instead of vesting in the Central Govt. vests on this date of publication of the declaration in Assam Gas Company Limited free from encumbrances.

SCHEDULE

| District : Jorhat | | | | | State : Assam | | | |
|-------------------|--------------------|--------|--------|---------------|---------------|-----|-----------|-------------|
| Sl. No. | Name of Village | Circle | Mouza | Patta No. | Dag No. | B | Area K | Remark L |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1. | Chetia gaon | Teok | Lahing | P. P. No. 86 | 83 | 0 | 0 | 13 |
| | | | | P. P. No. 120 | 88 | 0 | 2 | 10 |
| | | | | P. P. No. 120 | 89 | 0 | 4 | 12 |
| | | | | P. P. No. 120 | 90 | 0 | 0 | 2 |
| | | | | P. P. No. 209 | 99 | 0 | 0 | 3 |
| | | | | P. P. No. 135 | 100 | 0 | 2 | 2 |
| | | | | P. P. No. 30 | 101 | 0 | 0 | 11 |
| | | | | P. P. No. 86 | 102 | 0 | 1 | 4 |
| | | | | P. P. No. 102 | 111 | 0 | 1 | 3 |
| | | | | P. P. No. 27 | 112 | 0 | 0 | 15 |
| | | | | P. P. No. 120 | 113 | 0 | 1 | 3 |
| | | | | Waste land | 1265 | 0 | 0 | 7 |
| | | | | Total Area : | | 3 | 0 | 5 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|--------------------------------|------------------|-----------|---|---|--|---|---|
| 2. | 1 No. Bamun Gaon (1st Part) | Jorhat | Charigaon | P.P. No. 602 P.P. No. 572 P.P. No. 375 P.P. No. 602 P.P. No. 203 P.P. No. 328 P.P. No. 31 P.P. No. 69 P.P. No. 327 P.P. No. 329 P.P. No. 530 P.P. No. 441 P.P. No. 252 P.P. No. 141 P.P. No. 143 P.P. No. 335 | 1105 1120 1121 1122 1123 1124 562 986 1010 1057 1056 1055 555 556 558 559 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 | 0 0 1 0 0 0 1 0 0 0 0 0 0 0 1 1 | 9 4 0 13 4 11 10 11 11 8 11 3 5 8 6 |
| | | | | Total Area: | | 10 | 4 | 3 |
| 3. | 1 No. Bamum Gaon (2nd Part) | Jorhat | Charigaon | P.P. No. 351 P.P. No. 424 P.P. No. 411 P.P. No. 351 P.P. No. 427 P.P. No. 375 P.P. No. 246 P.P. No. 600 P.P. No. 414 P.P. No. 289 P.P. No. 427 P.P. No. 576 P.P. No. 559 | 1159 1176 1177 1255 1256 1258 1281 1282 1283 1349 1350 1351 2199 | 0 0 0 0 0 0 0 0 0 0 0 0 0 | 1 0 0 0 0 0 1 0 0 0 2 2 0 | 2 11 15 15 13 5 6 17 11 17 12 5 9 |
| | | | | Total Area | | 2 | 0 | 18 |
| 4. | Kalakhowa gaon | Jorhat (East) | Charigaon | P.P. No. 78 P.P. No. 503 P.P. No. 265 P.P. No. 265 P.P. No. 160 P.P. No. 503 P.P. No. 245 P.P. No. 484 P.P. No. 484 P.P. No. 337 P.P. No. 561 P.P. No. 241 P.P. No. 370 P.P. No. 484 P.P. No. 484 P.P. No. 562 P.P. No. 299 P.P. No. 19 P.P. No. 377 P.P. No. 378 P.P. No. 321 P.P. No. 24 | 25 688 681 685 686 687 689 690 694 695 697 811 820 826 829 830 831 832 835 836 854 855 | 0 2 | 0 2 1 3 0 0 0 0 3 1 0 0 0 0 0 0 0 0 0 0 2 | 5 19 4 13 2 11 9 18 0 2 5 11 13 12 4 11 2 5 8 15 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|--------------|---------------|------------------|-----------------------|---|---|---|---|---|
| 5. | Chengali-gaon | Jorhat (East) | Charigaon (Contd.) | P.P. No. 455 P.P. No. 455 P.P. No. 105 P.P. No. 454 P.P. No. 105 P.P. No. 463 P.P. No. 7 P.P. No. 90 P.P. No. 443 P.P. No. 105 P.P. No. 460 P.P. No. 463 P.P. No. 349 P.P. No. 193 P.P. No. 526 P.P. No. 422 P.P. No. 530 P.P. No. 352 | 30 31 32 33 34 35 38 98 99 100 101 103 104 105 171 172 173 174 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 | 0 0 0 0 0 1 1 1 1 1 1 1 0 0 0 0 1 1 1 | 7 15 15 7 5 15 0 17 13 8 5 5 2 5 10 17 10 13 |
| Total Area : | | | | | 4 | 0 | 9 | |

[No. O-120/3/2006/ONGD-III]

SHRI P. K. LASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2691.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 5016 तारीख 28 दिसम्बर 2006 द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और सक्षम अधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए घोषणा करती है कि पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार उस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय, सभी विलासगम्भीर सुविधाएँ असम गैस कम्पनी लि. में होंगी।

अनुसूची

जिला : शिवसागर

राज्य : असम

| क्रम नं. | गांव का नाम | सर्कल | मौजा | पट्टा नं. | दाग नं. | बीचा | क्षेत्रफल कट्टा | लुसा |
|-------------|---------------|---------|----------|----------------------|---------|------|--------------------|------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1. | मोरान चांगभाई | मोहमारा | खालोइघो- | मियादी पट्टा नं. 101 | 299 | 0 | 0 | 9 |
| | गांव | | घोरा | मियादी पट्टा नं. 141 | 303 | 0 | 1 | 9 |
| | | | | सरकार | 304 | 0 | 0 | 4 |
| | | | | मियादी पट्टा नं. 75 | 305 | 0 | 1 | 5 |
| | | | | मियादी पट्टा नं. 45 | 445 | 0 | 1 | 19 |
| | | | | मियादी पट्टा नं. 45 | 446 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 45 | 447 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 142 | 448 | 0 | 0 | 14 |
| | | | | मियादी पट्टा नं. 59 | 461 | 0 | 2 | 11 |
| | | | | मियादी पट्टा नं. 149 | 611 | 0 | 1 | 11 |
| | | | | कुल : | | 2 | 3 | 8 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | |
|-----|------------------------|---------|-------------|---|---|---|--|---|--|
| 2. | सेसापुखरी हावी गांव | मोहमारा | खालोइओ-घोरा | सरकार मियादी पट्टा नं. 51 मियादी पट्टा नं. 66 सरकार सरकार मियादी पट्टा नं. 31 मियादी पट्टा नं. 9 मियादी पट्टा नं. 9 मियादी पट्टा नं. 68 मियादी पट्टा नं. 68 मियादी पट्टा नं. 31 मियादी पट्टा नं. 31 एकासना पन्ना मियादी पट्टा नं. 85 सरकार सरकार मियादी पट्टा नं. 5 सरकार एकासना पन्ना मियादी पट्टा नं. 43 मियादी पट्टा नं. 29 मियादी पट्टा नं. 21 मियादी पट्टा नं. 23 मियादी पट्टा नं. मियादी पट्टा नं. 21 | 27 30 35 41 42 44 45 47 48 49 50 51 57 59 61 62 115 315 328 335 338 341 344 346 348 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 4 0 0 0 0 0 0 0 0 0 | 1 1 3 0 3 2 0 0 0 0 2 0 0 0 0 1 1 0 0 0 1 0 0 0 0 0 | 1 14 9 7 9 14 7 6 7 15 3 10 10 7 5 8 19 11 15 6 13 9 7 8 16 | |
| | | | कुल : | | 9 | 1 | 16 | | |
| 3. | काकारामारा बगीचा भाग-2 | मोहमारा | मोहमारा | मियादी पट्टा नं. 76 मियादी पट्टा नं. 76 मियादी पट्टा नं. 76 मियादी पट्टा नं. 76 एकासना मियादी पट्टा नं. 61 मियादी पट्टा नं. 25 मियादी पट्टा नं. 42 मियादी पट्टा नं. 25 सरकार सरकार मियादी पट्टा नं. 3 मियादी पट्टा नं. 25 | 10 12 13 14 39 44 45 46 47 93 395 409 410 | 0 0 0 0 0 0 0 0 0 0 0 0 0 0 | 1 0 1 0 0 0 1 0 1 0 0 0 0 0 | 8 19 6 9 15 9 14 12 6 6 10 16 | |
| | | | कुल : | | 2 | 0 | 16 | | |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|-------------------------|---------|------------------|---|---|---|---|--|
| 4. | मोउतगांव भाग-2 | मोहमारा | खालोइधो- घोरा | मियादी पट्टा नं. 142 मियादी पट्टा नं. 30 मियादी पट्टा नं. 173 मियादी पट्टा नं. 30 मियादी पट्टा नं. 173 मियादी पट्टा नं. 114 | 568 857 588 678 679 680 | 0 9 0 0 1 0 | 3 1 0 3 1 1 | 7 0 2 11 9 2 |
| | | | | कुल : | | 4 | 0 | 11 |
| 5. | बोरबोलगांव | डिमौ | बोकाता | मियादी पट्टा नं. 48 एकासना एकासना मियादी पट्टा नं. 48 एकासना | 463 469 470 471 477 | 0 0 0 0 0 | 3 2 0 2 0 | 14 11 15 15 4 |
| | | | | कुल : | | 1 | 4 | 19 |
| 6. | कुजीबली हावीगांव नाजिरा | हंसरा | | मियादी पट्टा नं. 78 मियादी पट्टा नं. 7 मियादी पट्टा नं. 61 सरकार मियादी पट्टा नं. 61 मियादी पट्टा नं. 7 मियादी पट्टा नं. 82 मियादी पट्टा नं. 18 मियादी पट्टा नं. 18 मियादी पट्टा नं. 82 मियादी पट्टा नं. 82 | 68 69 70 80 265 268 278 279 280 281 283 | 0 0 0 0 0 0 0 0 0 0 0 | 6 1 0 0 0 0 1 0 2 0 0 | 16 1 3 13 7 15 3 5 10 15 3 |
| | | | | कुल : | | 2 | 1 | 11 |
| 7. | मोथायासिगा गांव नाजिरा | जोकटेली | | सरकार एकासना सरकार सरकार एकासना सरकार मियादी पट्टा नं. 22 मियादी पट्टा नं. 250 मियादी पट्टा नं. 94 सरकार सरकार | 944 946 947 955 956 1001 1332 1395 1491 | 0 0 0 0 0 0 0 0 0 | 1 1 1 1 0 0 0 0 1 | 2 17 1 8 2 15 2 5 0 |
| | | | | कुल : | | 1 | 2 | 12 |
| 8. | मोयामरागांव | नाजिरा | हंसरा | मियादी पट्टा नं. 50 | 42 | 0 | 1 | 0 |
| | | | | कुल : | | 0 | 1 | 0 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|-------------|---------|------------|----------------------|-----|-----|-----|-----|
| 9. | डिमोकालगांव | शिवसागर | बेटबाड़ी | मियादी पट्टा नं. 77 | 141 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 77 | 142 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 5 | 144 | 0 | 1 | 17 |
| | | | | मियादी पट्टा नं. 37 | 145 | 0 | 1 | 0 |
| | | | | मियादी पट्टा नं. 32 | 147 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 32 | 148 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 47 | 150 | 0 | 0 | 17 |
| | | | | मियादी पट्टा नं. 47 | 151 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 79 | 152 | 0 | 0 | 6 |
| | | | | मियादी पट्टा नं. 119 | 153 | 0 | 0 | 10 |
| | | | | मियादी पट्टा नं. 90 | 154 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 79 | 155 | 0 | 0 | 6 |
| | | | | मियादी पट्टा नं. 4 | 156 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 90 | 157 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 90 | 159 | 0 | 0 | 19 |
| | | | | मियादी पट्टा नं. 90 | 160 | 0 | 0 | 14 |
| | | | | मियादी पट्टा नं. 90 | 161 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 90 | 162 | 0 | 1 | 2 |
| | | | | मियादी पट्टा नं. 90 | 163 | 0 | 1 | 4 |
| | | | | मियादी पट्टा नं. 11 | 164 | 0 | 1 | 9 |
| | | | | मियादी पट्टा नं. 90 | 215 | 0 | 0 | 13 |
| | | | | मियादी पट्टा नं. 90 | 737 | 0 | 0 | 8 |
| | | | | कुल : | | 3 | 0 | 5 |
| 10. | खेलुवा गाँव | शिवसागर | बेटबाड़ी | मियादी पट्टा नं. 146 | 182 | 0 | 1 | 3 |
| | | | | मियादी पट्टा नं. 100 | 962 | 0 | 2 | 11 |
| | | | | सरकार | 965 | 0 | 2 | 8 |
| | | | | मियादी पट्टा नं. 180 | 966 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 61 | 968 | 0 | 0 | 9 |
| | | | | मियादी पट्टा नं. 100 | 973 | 0 | 2 | 19 |
| | | | | मियादी पट्टा नं. 61 | 974 | 0 | 1 | 17 |
| | | | | सरकार | 986 | 0 | 2 | 0 |
| | | | | सरकार | 987 | 0 | 1 | 6 |
| | | | | कुल : | | 3 | 0 | 4 |
| 11. | चावडांगगांव | आमगुड़ी | गोधूलिबजार | मियादी पट्टा नं. 140 | 20 | 0 | 0 | 10 |
| | | | | मियादी पट्टा नं. 201 | 21 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 50 | 22 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 196 | 30 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 140 | 31 | 0 | 4 | 5 |
| | | | | मियादी पट्टा नं. 210 | 32 | 1 | 1 | 0 |
| | | | | मियादी पट्टा नं. 140 | 33 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 251 | 36 | 0 | 0 | 10 |
| | | | | कुल : | | 2 | 3 | 11 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|------------------------|---------|-----|--|--|---|---|--|
| 12. | कुकुरासुआ गाँव आमगुड़ी | होलगुरी | | मियादी पट्टा नं. 137 मियादी पट्टा नं. 86 मियादी पट्टा नं. 70 | 72 73 1232 | 0 0 0 | 2 2 0 | 13 19 5 |
| | | | | कुल : | | 1 | 0 | 17 |
| 13. | सेनसुआ गाँव आमगुड़ी | होलगुरी | | मियादी पट्टा नं. 284 मियादी पट्टा नं. 225 मियादी पट्टा नं. 222 मियादी पट्टा नं. 122 मियादी पट्टा नं. 68 मियादी पट्टा नं. 284 मियादी पट्टा नं. 3 मियादी पट्टा नं. 64 मियादी पट्टा नं. 2 | 414 416 417 418 421 422 424 429 1079 1220 | 0 0 0 0 0 0 0 0 0 | 0 1 1 1 1 0 4 0 1 | 5 13 8 0 12 4 5 12 4 |
| 9. | सेनसुआ गाँव आमगुड़ी | होलगुरी | | मियादी पट्टा नं. 344 मियादी पट्टा नं. 344 | 1222 1227 | 0 0 | 0 0 | 9 5 |
| | | | | कुल : | | 2 | 3 | 1 |

[सं. ओ-12016/69/2006/ओ एन जी डी-III]

श्री प्रकाश, अवर सचिव

New Delhi, the 12th September, 2007

S.O. 2691.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas S.O. 5016 dated 28th December, 2006 under sub section 3 of Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act 1962, (50 of 1962) the Central Government declared its intention to acquire the right of user in land specified in the schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub Section 1 of Section 6 of the said Act, submitted report to the Government.

And further whereas the Central Government has after considering the said report, decided to acquire the right of user in lands specified in the Schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub section (1) of the Section (6) of the said Act, the Central Govt. hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipeline;

And further in exercise of power conferred by sub section (4) of that section, the Central Govt. directs that right of user in the said lands shall instead of vesting in the Central Govt. vests on this date of publication of the declaration in Assam Gas Company Limited free from encumbrances.

SCHEDULE

District : Sivasagar

State : Assam

| Sl. No. | Name of Village | Circle | Mouza | Patta No. | Dag No. | Area B | Area K | Remarks L |
|------------|------------------------|---------|--------------------|---|--|----------------------------|----------------------------|------------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| 1. | Moran Changmai Gaon | Mahmora | Khaloi- ghogora | P.P. No. 101 P.P. No. 141 Waste land P.P. No. 75 P.P. No. 45 P.P. No. 45 | 299 303 304 305 445 446 | 0 0 0 0 0 0 | 0 1 0 1 1 1 | 9 9 4 5 19 13 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|---------------------------|-----------|--------------------|--|--|--|---|---|
| 4. | Mout gaon P-II | Mahmora | Khaloi- ghogora | P.P. No. 142 P.P. No. 30 P.P. No. 173 P.P. No. 30 P.P. No. 173 P.P. No. 114 | 586 587 588 678 679 680 | 0 1 0 0 1 0 | 3 1 0 3 1 1 | 7 0 2 11 9 2 |
| | | | | Total Area : | | 4 | 0 | 11 |
| 5. | Borbil gaon | Demow | Bokota | P.P. No. 48 Annual Annual P.P. No. 48 Annual | 463 469 470 471 477 | 0 0 0 0 0 | 3 2 0 2 0 | 14 11 15 15 4 |
| | | | | Total Area : | | 1 | 4 | 19 |
| 6. | Kujibali Havi gaon Nazira | | Hansara | P.P. No. 78 P.P. No. 7 P.P. No. 61 Waste land P.P. No. 61 P.P. No. 7 P.P. No. 82 P.P. No. 18 P.P. No. 18 P.P. No. 82 P.P. No. 82 | 68 69 70 80 265 268 278 279 280 281 283 | 0 0 0 0 0 0 0 0 0 0 0 | 6 1 0 0 0 0 1 0 2 0 0 | 16 1 3 13 7 15 3 5 10 15 3 |
| | | | | Total Area : | | 2 | 1 | 11 |
| 7. | Mothayasiga gaon Nazira | | Jouktoli | Waste land Annual Waste land Annual P.P. No. 22 P.P. No. 250 P.P. No. 94 Waste land Waste land | 944 946 947 955 956 1001 1332 1395 1491 | 0 0 0 0 0 0 0 0 0 | 1 1 1 1 0 0 0 0 1 | 2 17 1 8 2 15 2 5 0 |
| | | | | Total Area : | | 1 | 2 | 12 |
| 8. | Moiramora gaon | Nazira | Hansara | P.P. No. 50 | 42 | 0 | 1 | 0 |
| | | | | Total Area : | | 0 | 1 | 0 |
| 9. | Demowal gaon | Sivasagar | Batbari | P.P. No. 77 P.P. No. 77 P.P. No. 5 P.P. No. 37 P.P. No. 32 P.P. No. 32 P.P. No. 47 P.P. No. 47 P.P. No. 79 P.P. No. 119 P.P. No. 90 P.P. No. 79 | 141 142 144 145 147 148 150 151 152 153 154 155 | 0 0 0 0 0 0 0 0 0 0 1 0 | 0 0 1 1 0 1 0 0 0 0 4 17 | 0 2 17 0 2 4 17 5 6 10 4 6 |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
|-----|-----------------|-----------|---------------|--------------|------|-----|-----|-----|
| 9. | Demowal gaon | Sivasagar | Batbari | P.P. No. 4 | 156 | 0 | 0 | 2 |
| | | | | P.P. No. 90 | 157 | 0 | 0 | 2 |
| | | | | P.P. No. 90 | 159 | 0 | 0 | 19 |
| | | | | P.P. No. 90 | 160 | 0 | 0 | 14 |
| | | | | P.P. No. 90 | 161 | 0 | 0 | 2 |
| | | | | P.P. No. 90 | 162 | 0 | 1 | 2 |
| | | | | P.P. No. 90 | 164 | 0 | 1 | 9 |
| | | | | P.P. No. 11 | 163 | 0 | 1 | 4 |
| | | | | P.P. No. 90 | 215 | 0 | 0 | 13 |
| | | | | P.P. No. 90 | 737 | 0 | 0 | 8 |
| | | | | Total Area : | | 3 | 0 | 5 |
| 10. | Kheluwa gaon | Sivasagar | Batbari | P.P. No. 146 | 182 | 0 | 1 | 3 |
| | | | | P.P. No. 100 | 962 | 0 | 2 | 11 |
| | | | | Waste land | 965 | 0 | 2 | 8 |
| | | | | P.P. No. 180 | 966 | 0 | 0 | 11 |
| | | | | P.P. No. 61 | 968 | 0 | 0 | 9 |
| | | | | P.P. No. 100 | 973 | 0 | 2 | 19 |
| | | | | P.P. No. 61 | 974 | 0 | 1 | 17 |
| | | | | Waste land | 986 | 0 | 2 | 0 |
| | | | | Waste land | 987 | 0 | 1 | 6 |
| | | | | Total Area : | | 3 | 0 | 4 |
| 11. | Chawdang gaon | Amguri | Gadhuli-bazar | P.P. No. 140 | 20 | 0 | 0 | 10 |
| | | | | P.P. No. 201 | 21 | 0 | 0 | 11 |
| | | | | P.P. No. 50 | 22 | 0 | 0 | 5 |
| | | | | P.P. No. 196 | 30 | 0 | 0 | 15 |
| | | | | P.P. No. 140 | 31 | 0 | 4 | 5 |
| | | | | P.P. No. 210 | 32 | 1 | 1 | 0 |
| | | | | P.P. No. 140 | 33 | 0 | 0 | 15 |
| | | | | P.P. No. 251 | 36 | 0 | 0 | 10 |
| | | | | Total Area : | | 2 | 3 | 11 |
| 12. | Kukurasuwa gaon | Amguri | Hologuri | P.P. No. 137 | 72 | 0 | 2 | 13 |
| | | | | P.P. No. 86 | 73 | 0 | 2 | 19 |
| | | | | P.P. No. 70 | 1232 | 0 | 0 | 5 |
| | | | | Total Area : | | 1 | 0 | 17 |
| 13. | Sensuwa gaon | Amguri | Hologuri | P.P. No. 284 | 414 | 0 | 0 | 5 |
| | | | | P.P. No. 225 | 416 | 0 | 1 | 13 |
| | | | | P.P. No. 222 | 417 | 0 | 1 | 8 |
| | | | | P.P. No. 122 | 418 | 0 | 1 | 0 |
| | | | | P.P. No. 68 | 421 | 0 | 1 | 12 |
| | | | | P.P. No. 284 | 422 | 0 | 0 | 4 |
| | | | | P.P. No. 3 | 424 | 0 | 4 | 5 |
| | | | | P.P. No. 64 | 429 | 0 | 0 | 12 |
| | | | | P.P. No. 2 | 1079 | 0 | 1 | 4 |
| | | | | P.P. No. 344 | 1220 | 0 | 0 | 4 |
| | | | | P.P. No. 344 | 1222 | 0 | 0 | 9 |
| | | | | P.P. No. 344 | 1227 | 0 | 0 | 5 |
| | | | | Total Area : | | 2 | 3 | 1 |

[No. O-12916/69/2006/ONGD-III]

SHRI PRAKASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2692.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) के अधीन भारत सरकार के पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 619 तारीख 20 फरवरी 2007 द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी,

और सक्षम अधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन सरकार को अपनी रिपोर्ट दे दी है,

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है,

अतः अब, केन्द्रीय सरकार अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्ति का प्रयोग करते हुए घोषणा करती है कि पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में उपयोग के अधिकार का अर्जन किया जाता है।

और केन्द्रीय सरकार उस धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार उस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाय, सभी विल्लंगमों से मुक्त, असम गैस कम्पनी लि. में होगा।

अनुसूची

जिला जोरहाट

राज्य : असम

| क्रम सं. | गाँव का नाम | सर्कल | मोजा | पट्टा नं. | दाग नं. | क्षेत्रफल | | |
|----------|---------------|---------|------|---------------------|---------|-----------|-------|------|
| | | | | | | बीघा | कट्टा | लुसा |
| 1 | खरिकटीया गाँव | मरियानी | कटनी | सरकार | 139 | 1 | 1 | 8 |
| | खण्ड-3 | | गाँव | एकसना | 140 | 0 | 1 | 17 |
| | | | | सरकार | 421 | 0 | 0 | 14 |
| | | | | सरकार | 459 | 0 | 0 | 16 |
| | | | | कुल : | | 1 | 4 | 15 |
| 2 | घरफलीया गाँव | मरियानी | कटनी | मियादी पट्टा नं. 36 | 54 | 0 | 1 | 6 |
| | | | गाँव | मियादी पट्टा नं. 11 | 55 | 0 | 2 | 0 |
| | | | | मियादी पट्टा नं. 34 | 57 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 10 | 58 | 0 | 0 | 16 |
| | | | | मियादी पट्टा नं. 38 | 59 | 0 | 0 | 16 |
| | | | | मियादी पट्टा नं. 10 | 63 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 52 | 64 | 0 | 2 | 2 |
| | | | | मियादी पट्टा नं. 49 | 65 | 0 | 2 | 15 |
| | | | | मियादी पट्टा नं. 31 | 66 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 46 | 68 | 0 | 1 | 14 |
| | | | | मियादी पट्टा नं. 35 | 109 | 0 | 0 | 18 |
| | | | | मियादी पट्टा नं. 39 | 110 | 0 | 1 | 0 |
| | | | | मियादी पट्टा नं. 12 | 111 | 0 | 0 | 15 |
| | | | | मियादी पट्टा नं. 24 | 112 | 0 | 1 | 13 |
| | | | | मियादी पट्टा नं. 9 | 113 | 0 | 2 | 5 |
| | | | | मियादी पट्टा नं. 33 | 114 | 0 | 2 | 0 |
| | | | | मियादी पट्टा नं. 9 | 116 | 0 | 0 | 11 |
| | | | | मियादी पट्टा नं. 27 | 117 | 0 | 2 | 11 |
| | | | | मियादी पट्टा नं. 44 | 118 | 0 | 0 | 2 |
| | | | | मियादी पट्टा नं. 32 | 119 | 0 | 0 | 5 |
| | | | | मियादी पट्टा नं. 40 | 122 | 1 | 2 | 3 |
| | | | | मियादी पट्टा नं. 19 | 123 | 0 | 1 | 16 |
| | | | | कुल : | | 6 | 4 | 5 |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----|---------------------|---------|--------------|--|---|---------------------------------|---------------------------------|-------------------------------------|
| 3. | डेका गाँव | मरियानी | कटनी गाँव | मियादी पट्टा नं. 83 मियादी पट्टा नं. 83 | 48 50 | 0 0 | 0 0 | 16 3 |
| | | | | कुल : | | 0 | 0 | 19 |
| 4. | डकलंगीया चाह बागिचा | मरियानी | कटनी गाँव | सरकार एकसना-2 चाह म्यादी 1 सरकार सरकार एकसना-2 सरकार | 171 174 175 179 191 274 291 | 0 0 1 0 1 2 0 | 0 0 1 2 3 0 0 | 3 13 12 8 1 15 12 |
| | | | | कुल : | | 5 | 4 | 4 |

[सं. ओ-12016/69/2006-ओ एन जी डी-III]

श्री प्रकाश, अवर सचिव

New Delhi, the 12th September, 2007

S.O. 2692.—Whereas by notification of the Government of India in the Ministry of Petroleum & Natural Gas S.O. 619, dated 20th February, 2007 under sub section 3 of Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962) the Central Government declared its intention to acquire the right of user in land specified in the Schedule appended to that notification for the purpose of laying pipeline.

And whereas the Competent Authority has under sub section (1) of Section 6 of the said Act, submitted report to the Government.

And further whereas the Central Government has after considering the said report, decided to acquire the right of user in lands specified in the schedule appended to this notification.

Now, therefore, in exercise of the power conferred by sub section (1) of the section (6) of the said Act, the Central Govt. hereby declares that the right of user in the said lands specified in the schedule appended to this notification hereby acquired for laying the pipelines;

And further in exercise of power conferred by sub-section (4) of that section, the Central Govt. directs that right of user in the said lands shall instead of vesting in the Central Govt. vests on this date of publication of the declaration in the Assam Gas Company Limited free from encumbrances.

SCHEDULE

District—Jorhat

State : Assam

| Sl. No. | Name of Village | Circle | Mouza | Patta No. | Dag No. | B | K | L | Remarks |
|------------|--------------------------------|---------|----------------|--|--|--------------------------------------|--------------------------------------|--|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1. | Kharikatia Village Part-III | Moriani | Katani Gaon | Waste Land Annual | 139 140 | 1 0 | 1 1 | 8 17 | |
| | | | | Waste Land | 421 | 0 | 0 | 14 | |
| | | | | Waste Land | 459 | 0 | 0 | 16 | |
| | | | | Total Area- | | 1 | 4 | 15 | |
| 2. | Gharpholia Gaon | Moriani | Katani Gaon | P.P. No. 36 P.P. No. 11 P.P. No. 34 P.P. No. 10 P.P. No. 38 P.P. No. 10 P.P. No. 52 P.P. No. 49 | 54 55 57 58 59 63 64 65 | 0 0 0 0 0 0 0 0 | 1 2 1 0 0 0 2 2 | 6 0 13 16 16 2 2 15 | |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|----|-----------------------------|---------------------|----------------------------|--|--|--|--|--|
| 2. | Gharpholia Gaon (Contd.) | Moriani (Contd.) | Katani Gaon (Contd.) | P.P. No. 31 P.P. No. 46 P.P. No. 35 P.P. No. 39 P.P. No. 12 P.P. No. 24 P.P. No. 9 P.P. No. 33 P.P. No. 9 P.P. No. 27 P.P. No. 44 P.P. No. 32 P.P. No. 40 P.P. No. 19 | 66 68 109 110 111 112 113 114 116 117 118 119 122 123 | 0 0 0 0 0 0 0 0 0 0 0 0 1 0 | 0 1 0 1 0 1 2 2 0 2 0 0 2 1 | 16 14 18 0 15 13 5 0 11 11 2 5 3 16 |
| | | | | Total Area | | 6 | 4 | 5 |
| 3. | Deka Gaon | Moriani | Katani Gaon | P.P. No. 83 P.P. No. 83 | 48 50 | 0 0 | 0 0 | 16 3 |
| | | | | Total Area | | 0 | 0 | 19 |
| 4. | Duklongia Chah Bagicha | Moriani | Katani Gaon | Waste Land Annual-2 T.P. No. 1 Waste Land Waste Land Annual-2 Waste Land | 171 174 175 179 191 274 291 | 0 0 1 0 1 2 0 | 0 0 1 2 3 0 0 | 3 13 12 8 1 15 12 |
| | | | | Total Area | | 5 | 4 | 4 |

[No. O-12016/69/2006/ONGD-III]

SHRI PRAKASH, Under Secy.

नई दिल्ली, 12 सितम्बर, 2007

का.आ. 2693.—जबकि केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में यह आवश्यक है कि नुमलीगढ़ रिफाइनरी लिमिटेड को प्राकृतिक गैस आपूर्ति के लिये दुलियाजान से नुमलीगढ़, जिला गोलाघाट तक आसाम गैस कम्पनी लिमिटेड, दुलियाजान द्वारा पाइपलाइन बिछायी जानी चाहिए।

और अतः यह प्रतीत होता है कि ऐसी लाइनों को बिछानें के प्रयोजन के लिये इसके साथ उपाबद्ध अनुसूची में वर्णित भूमि में उपयोग का अधिकार अर्जित करना आवश्यक है।

अतः अब पेट्रोलियम पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उसमें उपयोग का अधिकार अर्जित करने का अपूर्णा आशय एतद्वारा घोषित करती है।

उक्त भूमि में हितबद्ध कोई व्यक्ति उस भूमि के नीचे पाइपलाइन बिछाने के लिये आपत्ति और सुझाव सक्षम अधिकारी नामतः जिला उपायुक्त शिवसागर, असम को इस अधिसूचना की तारीख से 21 दिनों के भीतर कर सकता है।

और ऐसी आपत्ति और सुझाव देने वाला व्यक्ति यह भी बताएगा कि क्या वह अपनी सुनवाई व्यक्तिगत रूप से चाहता है अथवा किसी विधि व्यवसायी के माध्यम से।

अनुसूची

जिला—शिवसागर

राज्य : असम

| क्रम | गाँव का नाम | सर्कल | मौजा | पट्टा नं. | दाग नं. | क्षेत्रफल | बीघा | कट्टा | लुसा |
|------|-------------|-------|--------|----------------------|---------|-----------|------|-------|------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | |
| 1. | गोहाई गाँव | डिमो | बोकोटा | मियादी पट्टा नं. 73 | 670 | 0 | 1 | 9 | |
| | | | | मियादी पट्टा नं. 185 | 671 | 0 | 0 | 17 | |
| | | | | मियादी पट्टा नं. 227 | 673 | 0 | 1 | 4 | |
| | | | | मियादी पट्टा नं. 73 | 859 | 0 | 0 | 5 | |
| | | | | मियादी पट्टा नं. 190 | 862 | 0 | 2 | 19 | |
| | | | | मियादी पट्टा नं. 250 | 864 | 0 | 2 | 0 | |
| | | | | कुल : | | 1 | 3 | 14 | |

[सं. ओ-12016/69/2006-ओ एन जी -III]

श्री प्रकाश, अवर सचिव

New Delhi, the 12th September, 2007

S.O. 2693.—Whereas it appears to the Central Government that it is necessary for supply of Natural Gas to Numoligarh Refinery Limited (NRL) in the district of Sivasagar, Assam, pipeline should be laid from Duliajan to NRL, Golaghat.

And Whereas it appears that for the purpose of laying such pipeline it is necessary to acquire the Right of User in Land described in the schedule annexed hereto.

Now, therefore in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the said land may within 21 days from the date of this notification send objections and suggestions to the laying of the pipeline under the land to the competent authority, namely the Deputy Commissioner, Sivasagar District, Sivasagar, Assam.

And every person making such objections and suggestions may also state whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

DISTRICT—SIVASAGAR

| Sl. No. | Name of Village | Circle | Mouza | Patta No | Dag No | B | AREA K | L | Remarks |
|------------|-----------------|--------|--------|-------------|-------------------|---|-----------|----|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1. | Gohain Gaon | Demow | Bokota | PP No. 73 | 670 | 1 | 1 | 9 | |
| | | | | PP No. 185 | 671 | 0 | 0 | 17 | |
| | | | | PP No. 227 | 673 | 0 | 1 | 4 | |
| | | | | PP No. 73 | 859 | 0 | 0 | 5 | |
| | | | | PP No. 190 | 862 | 0 | 2 | 19 | |
| | | | | PP No. 250 | 864 | 0 | 2 | 0 | |
| | | | | | Total = 1 area | | 3 | 14 | |

[No. O-12016/69/2006-ONG-III]

SHRI PRAKASH, Under Secy.

नई दिल्ली, 20 सितम्बर, 2007

का.आ. 2694.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि, मैसर्स रिलायन्स गैस ट्रान्सपोर्टेशन इन्फ्रास्ट्रक्चर लिमिटेड, की काकीनाडा-हैदराबाद-उरान-अहमदाबाद ट्रंक गैस पाइपलाइन से, महाराष्ट्र राज्य में ठाणे जिले के विभिन्न उपभोक्ताओं तक प्राकृतिक गैस के परिवहन के लिए, मैसर्स रिलायन्स गैस ट्रान्सपोर्टेशन इन्फ्रास्ट्रक्चर लिमिटेड द्वारा कोल्हन से तारापुर तक एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि, उस भूमि में, जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम के अधीन जारी की गई अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इवकीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाई जाने के लिए उपयोग के अधिकार के अर्जन के संबंध में श्री एस. डी. भिसे, सक्षम प्राधिकारी, रिलायन्स गैस ट्रान्सपोर्टेशन इन्फ्रास्ट्रक्चर लिमिटेड, दूसरी मैजिल, हरि नारायण कॉम्प्लेक्स, जुना डालडा डिपो, शिवाजी चौक, फर्नीचर मार्केट, उल्हासनगर-421003, जिला ठाणे महाराष्ट्र राज्य को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

| तहसील : डहाणु गाँव का नाम | जिला : ठाणे सर्वे/हिस्सा नंबर | राज्य : महाराष्ट्र आर.ओ.यु. अर्जित करने के लिए क्षेत्रफल | | |
|------------------------------|--|--|--|--|
| | | हेक्टेयर | एयर | सि-एयर |
| 1 | 2 | 3 | 4 | 5 |
| 1. कोल्हन | 9 10 11 34/पै 13/1 33/1 16/1 39/1 17/1 नदी | 00 00 00 01 00 00 00 00 00 00 | 14 20 12 11 00 13 07 01 04 03 | 82 15 94 36 79 88 47 10 68 15 |
| तहसील : पालघर | जिला : ठाणे | राज्य : महाराष्ट्र | | |
| 1 | 2 | 3 | 4 | 5 |
| 1. बरहाणपुर | सर्वे नं. 86 के नजदीक नाला 86 87 85 92 84 83 79 81 75 72 70 69 68 सर्वे नं. 68 और 52 के बीच में नाला | 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 | 02 28 33 07 00 18 17 19 07 11 50 01 56 00 02 | 97 67 13 84 68 32 20 03 09 70 20 73 48 57 90 |

| 1 | 2 | 3 | 4 | 5 |
|--------------------|--------------------------------------|----|----|----|
| 1. बरहाणपुर (जारी) | 52 | 00 | 16 | 44 |
| 2. आंबेदे | 180 | 00 | 05 | 83 |
| | 179 बी | 00 | 00 | 76 |
| | 179 सी | 00 | 00 | 58 |
| | 178 | 00 | 23 | 46 |
| | 176ए | 00 | 10 | 55 |
| | 176बी | 00 | 07 | 79 |
| | 173 | 00 | 04 | 40 |
| | 172 | 00 | 12 | 33 |
| | 170 | 00 | 01 | 18 |
| | सर्वे नं. 170 और 167 के बीच में नाला | 00 | 13 | 88 |
| | 167 | 00 | 00 | 35 |
| | 123 | 00 | 00 | 13 |
| | 124 | 00 | 08 | 09 |
| | 125 | 00 | 06 | 36 |
| | 104 | 00 | 00 | 62 |
| | 126 | 00 | 11 | 48 |
| | 134 | 00 | 00 | 01 |
| | 127 | 00 | 08 | 28 |
| | 128 | 00 | 00 | 90 |
| | 133 | 00 | 00 | 24 |
| | 130 | 00 | 06 | 84 |
| | 129 | 00 | 00 | 03 |
| | 131 | 00 | 05 | 04 |
| | 286 | 00 | 07 | 17 |
| | 141 | 00 | 04 | 68 |
| | 285 | 00 | 07 | 18 |
| | 142 | 00 | 04 | 95 |
| | 143 | 00 | 10 | 42 |
| | 284 | 01 | 54 | 15 |
| | सर्वे नं. 284 के नजदीक नाला | 00 | 00 | 71 |
| 3. नानीवली | नदी | 00 | 02 | 31 |
| | 88 | 00 | 18 | 54 |
| | 86 | 00 | 00 | 03 |
| | 92 | 00 | 08 | 67 |
| | 93 | 00 | 20 | 43 |
| | 99 | 00 | 15 | 14 |
| | 94 | 00 | 08 | 68 |
| | 97 | 00 | 00 | 47 |
| | 98 | 00 | 10 | 48 |
| | 127 | 00 | 10 | 40 |
| | 83 | 00 | 15 | 46 |
| | 100 | 00 | 26 | 00 |
| | 134 | 00 | 16 | 06 |
| | 133 | 00 | 10 | 60 |

| 1 | 2 | 3 | 4 | 5 |
|-----------------------|-------------------------------------|----|----|----|
| 3. नानीवली (आगे जारी) | 132 | 00 | 00 | 56 |
| | 164 | 00 | 22 | 57 |
| | 148 | 00 | 00 | 68 |
| | 150 | 00 | 02 | 62 |
| | 163 | 00 | 00 | 88 |
| | 165 | 00 | 04 | 39 |
| | 162 | 00 | 06 | 36 |
| | 166 | 00 | 15 | 73 |
| | 185 | 00 | 00 | 62 |
| | 189 | 00 | 36 | 37 |
| | 207/1, 2 | 00 | 07 | 02 |
| | 41 | 00 | 09 | 04 |
| | 43 | 00 | 03 | 58 |
| | 42 | 00 | 16 | 34 |
| | 38 | 00 | 18 | 22 |
| | 39 | 00 | 07 | 87 |
| | 21 | 00 | 07 | 79 |
| | 20 | 00 | 02 | 63 |
| | 18 | 00 | 05 | 91 |
| | 19 | 00 | 25 | 00 |
| | 22 | 00 | 22 | 29 |
| | 23 | 00 | 13 | 87 |
| | 24 | 00 | 07 | 09 |
| | सर्वे नं. 24 और 317 के बीच में नाला | 00 | 01 | 81 |
| | 317 | 02 | 25 | 94 |
| | नदी | 00 | 02 | 57 |
| | नदी | 00 | 03 | 61 |
| 4. आकेगव्हाण | 49 सरकारी जमीन | 00 | 56 | 83 |
| | 28 | 00 | 06 | 46 |
| | 26 पै | 00 | 95 | 08 |
| | 27 | 00 | 01 | 44 |
| | 25 | 00 | 09 | 50 |
| | 39 | 00 | 16 | 36 |
| | 42 | 00 | 29 | 54 |
| | 22 | 00 | 25 | 63 |
| | 16 | 00 | 17 | 51 |
| | 21 | 00 | 14 | 93 |
| | 44 | 00 | 23 | 21 |
| | 17 | 00 | 09 | 05 |
| 5. अकोली | 40 | 00 | 55 | 23 |
| | 41 | 00 | 49 | 05 |
| | 21 | 00 | 00 | 95 |
| | 42/1 से 5 | 00 | 64 | 52 |
| | 73 | 00 | 02 | 36 |
| | 20 | 00 | 06 | 88 |

| 1 | 2 | 3 | 4 | 5 |
|---------------------------|---------------|----|----|----|
| 5. अकोली (जारी) | 54 | 00 | 06 | 11 |
| | 10 | 00 | 02 | 39 |
| | 55 | 00 | 14 | 62 |
| | 59 | 00 | 01 | 44 |
| | 57 | 00 | 27 | 54 |
| | 43 | 00 | 00 | 55 |
| 6. रावते | 90 | 00 | 33 | 91 |
| | 89 | 00 | 26 | 80 |
| | 98 | 00 | 21 | 64 |
| | 78 | 00 | 01 | 98 |
| | 97 | 00 | 02 | 92 |
| | 94 | 00 | 01 | 56 |
| | 99 | 00 | 07 | 68 |
| | 102 | 00 | 40 | 88 |
| | 100 | 00 | 03 | 04 |
| | 125 | 00 | 57 | 85 |
| | 66 | 01 | 12 | 44 |
| | 130 | 00 | 08 | 14 |
| | 65 | 00 | 37 | 45 |
| | 40 | 00 | 12 | 98 |
| | 66 W.P.F. | 01 | 13 | 22 |
| | नदी | 00 | 12 | 69 |
| 7. गारगाँव | नदी | 00 | 10 | 25 |
| | 97 | 00 | 16 | 70 |
| | 101 फॉरेस्ट | 00 | 11 | 80 |
| | 96 | 00 | 07 | 34 |
| | 102 | 00 | 12 | 39 |
| | 94 फॉरेस्ट | 00 | 03 | 44 |
| | 89 | 00 | 18 | 96 |
| | 88 | 00 | 05 | 51 |
| | 58W.P.F | 00 | 51 | 88 |
| | 78 | 00 | 00 | 01 |
| | 79 | 00 | 14 | 09 |
| | 82 | 00 | 97 | 53 |
| 8. सुमडी शिंगाँव गावापैकी | 31 (463) | 01 | 06 | 29 |
| | 34 (388) | 00 | 21 | 08 |
| | 39 (387) | 00 | 01 | 94 |
| | 40 (385) | 00 | 33 | 93 |
| | 53 (464 त्रै) | 01 | 13 | 41 |
| | 41 (386) | 00 | 06 | 32 |
| | 51 (381) | 00 | 24 | 99 |
| | 52 (380) | 00 | 02 | 62 |
| | 50 (379) | 00 | 02 | 69 |
| | 70(377) | 00 | 20 | 06 |
| | 72(370) | 00 | 01 | 23 |
| | 65(397) | 00 | 01 | 84 |
| | 66(399) | 00 | 10 | 76 |
| | 67(400) | 00 | 07 | 52 |

| 1 | 2 | 3 | 4 | 5 |
|---------------|------------|----|----|----|
| 9-शिगांव | 30 | 00 | 00 | 15 |
| | 29 | 00 | 06 | 87 |
| | 28 | 00 | 00 | 36 |
| | 31ए/बी | 00 | 34 | 58 |
| | 32 | 00 | 01 | 72 |
| | 26 | 00 | 03 | 52 |
| | 81 | 00 | 10 | 27 |
| | 34 | 00 | 16 | 36 |
| | 35 | 00 | 08 | 27 |
| | 36 | 00 | 09 | 89 |
| | 80 | 00 | 24 | 13 |
| | 78 | 00 | 55 | 73 |
| | 79 फॉरेस्ट | 00 | 15 | 71 |
| | 106 | 00 | 02 | 68 |
| | 107 | 00 | 09 | 44 |
| | 108 | 00 | 23 | 91 |
| | 323 | 00 | 07 | 17 |
| | 112 | 00 | 04 | 46 |
| | 67 | 01 | 11 | 45 |
| | 124 | 00 | 00 | 39 |
| | 121 | 00 | 07 | 41 |
| | 119 | 00 | 01 | 54 |
| | 120 | 00 | 13 | 74 |
| | 140 | 00 | 26 | 58 |
| | 127 | 00 | 02 | 54 |
| | 126 | 00 | 01 | 56 |
| | 129 | 00 | 03 | 71 |
| | 128 | 00 | 00 | 63 |
| | 141 | 00 | 08 | 16 |
| | 142 | 00 | 07 | 98 |
| | 144 | 00 | 15 | 82 |
| | 153 | 00 | 06 | 52 |
| | 154 | 00 | 17 | 05 |
| | 155ए/बी | 00 | 11 | 63 |
| | 156 | 00 | 02 | 00 |
| | 162 | 00 | 23 | 70 |
| | 163 | 00 | 28 | 62 |
| | 165 | 00 | 41 | 39 |
| | 166 | 00 | 26 | 87 |
| | 167 | 00 | 27 | 63 |
| 10-नेवालेगांव | 124/4ए | 00 | 00 | 04 |
| | 89/1 | 00 | 35 | 84 |
| | 88 | 00 | 55 | 58 |
| | 81 | 00 | 24 | 03 |
| | 86/पै | 00 | 59 | 75 |
| | 85 | 00 | 10 | 23 |
| | 82 | 00 | 47 | 58 |
| | 83 | 00 | 41 | 03 |
| | 79 | 00 | 56 | 33 |
| | 121 | 00 | 11 | 83 |
| | 115ए | 00 | 23 | 41 |

| 1 | 2 | 3 | 4 | 5 |
|---------------|----------------------------|----|----|----|
| 11. मुंडावली | 52 | 02 | 57 | 33 |
| | 57 | 00 | 22 | 09 |
| | 72/3 | 00 | 12 | 45 |
| | 69 | 00 | 08 | 50 |
| | नदी | 00 | 03 | 52 |
| 12. अंबातपाडा | सर्वे नं. 11 के नजदीक नाला | 00 | 01 | 91 |
| | 11 | 00 | 17 | 25 |
| | 13/1 | 00 | 18 | 71 |
| | 14 | 00 | 33 | 93 |
| | 16/6 | 00 | 00 | 09 |
| | 16/1 | 00 | 07 | 97 |
| 13. परनाली | 22 | 00 | 10 | 09 |

[फा. सं. एल. 14014/11/2007-जीवी]

एस. बी. मंडल अवर सचिव

New Delhi, the 20th September, 2007

S.O. 2694.—Whereas it appears to the Central Government that it is necessary in public interest that for transportation of natural gas from the Kakinada-Hyderabad-Uran-Ahmedabad trunk gas pipeline of M/s. Reliance Gas Transportation Infrastructure Limited,

To various consumers of district Thane in State of Maharashtra, a pipeline should be laid from Kolhan to Tarapur by M/s. Reliance Gas Transportation Infrastructure Limited;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which are described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of the notification as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of right of the user therein for laying the pipeline under the land to Shri S. D. Bhise, Competent Authority, Reliance Gas Transportation Infrastructure Limited, 2nd Floor, Hari Narayan Complex, Old Dalda Depot, Shivaji Chowk, Furniture Market, Ulhasnagar-421 003, Dist. Thane, Maharashtra State.

SCHEDULE

| Tehsil : Dahanu | | District : Thane | State : Maharashtra | | |
|-----------------|-------------------------|--|--|--|--|
| Village | Survey/Sub-division No. | Area required for Rou Acquisition | | | |
| | | Hect. | Are | C-Are | |
| 1 | 2 | 3 | 4 | 5 | |
| (1) | Kolhan | 9 10 11 34/P 13/1 33/1 16/1 39/1 17/1 River | 00 00 00 01 00 00 00 00 00 00 | 14 20 12 11 00 13 07 01 04 03 | 82 15 94 36 79 88 47 10 68 15 |

| 1 | 2 | 3 | 4 | 5 |
|---------------|---------------------------------|----|----|----|
| (1) Barhanpur | Nala near Svy. No. 86 | 00 | 02 | 97 |
| | 86 | 00 | 28 | 67 |
| | 87 | 00 | 33 | 13 |
| | 85 | 00 | 07 | 84 |
| | 92 | 00 | 00 | 68 |
| | 84 | 00 | 18 | 32 |
| | 83 | 00 | 17 | 20 |
| | 79 | 00 | 19 | 03 |
| | 81 | 00 | 07 | 09 |
| | 75 | 00 | 11 | 70 |
| | 72 | 00 | 50 | 20 |
| | 70 | 00 | 01 | 73 |
| | 69 | 00 | 56 | 48 |
| | 68 | 00 | 00 | 57 |
| | Nala in bet. Svy. No. 68 & 52 | 00 | 02 | 90 |
| | 52 | 00 | 16 | 44 |
| (2) Ambede | 180 | 00 | 05 | 83 |
| | 179B | 00 | 00 | 76 |
| | 179C | 00 | 00 | 58 |
| | 178 | 00 | 23 | 46 |
| | 176A | 00 | 10 | 55 |
| | 176B | 00 | 07 | 79 |
| | 173 | 00 | 04 | 40 |
| | 172 | 00 | 12 | 33 |
| | 170 | 00 | 01 | 18 |
| | Nala in bet. Svy. No. 170 & 167 | 00 | 13 | 88 |
| | 167 | 00 | 00 | 35 |
| | 123 | 00 | 00 | 13 |
| | 124 | 00 | 08 | 09 |
| | 125 | 00 | 06 | 36 |
| | 104 | 00 | 00 | 62 |
| | 126 | 00 | 11 | 48 |
| | 134 | 00 | 00 | 01 |
| | 127 | 00 | 08 | 28 |
| | 128 | 00 | 00 | 90 |
| | 133 | 00 | 00 | 24 |
| | 130 | 00 | 06 | 84 |
| | 129 | 00 | 00 | 03 |
| | 131 | 00 | 05 | 04 |
| | 286 | 00 | 07 | 17 |
| | 141 | 00 | 04 | 68 |
| | 285 | 00 | 07 | 18 |
| | 142 | 00 | 04 | 95 |
| | 143 | 00 | 10 | 42 |
| | 284 | 01 | 54 | 15 |
| | Nala near Svy. No. 284 | 00 | 00 | 71 |
| | River | 00 | 02 | 31 |
| (3) Nanivali | 88 | 00 | 18 | 54 |
| | 86 | 00 | 00 | 03 |
| | 92 | 00 | 08 | 67 |
| | 93 | 00 | 20 | 43 |
| | 99 | 00 | 15 | 14 |
| | 94 | 00 | 08 | 68 |
| | 97 | 00 | 00 | 47 |
| | 98 | 00 | 10 | 48 |

| 1 | 2 | 3 | 4 | 5 |
|------------------------|--------------------------------|----|----|----|
| (3) Nanivali (Cont...) | | | | |
| | 127 | 00 | 10 | 40 |
| | 83 | 00 | 15 | 46 |
| | 100 | 00 | 26 | 00 |
| | 134 | 00 | 16 | 06 |
| | 133 | 00 | 10 | 60 |
| | 132 | 00 | 00 | 56 |
| | 164 | 00 | 22 | 57 |
| | 148 | 00 | 00 | 68 |
| | 150 | 00 | 02 | 62 |
| | 163 | 00 | 00 | 88 |
| | 165 | 00 | 04 | 39 |
| | 162 | 00 | 06 | 36 |
| | 166 | 00 | 15 | 73 |
| | 185 | 00 | 00 | 62 |
| | 189 | 00 | 36 | 37 |
| | 207/1,2 | 00 | 07 | 02 |
| | 41 | 00 | 09 | 04 |
| | 43 | 00 | 03 | 58 |
| | 42 | 00 | 16 | 34 |
| | 38 | 00 | 18 | 22 |
| | 39 | 00 | 07 | 87 |
| | 21 | 00 | 07 | 79 |
| | 20 | 00 | 02 | 63 |
| | 18 | 00 | 05 | 91 |
| | 19 | 00 | 25 | 00 |
| | 22 | 00 | 22 | 29 |
| | 23 | 00 | 13 | 87 |
| | 24 | 00 | 07 | 09 |
| | Nala in bet. Svy. No. 24 & 317 | | | |
| | 317 | 00 | 01 | 81 |
| | River | 02 | 25 | 94 |
| (4) Aakegavhan | River | 00 | 02 | 57 |
| | 49 GL. | 00 | 03 | 61 |
| | 28 | 00 | 56 | 83 |
| | 26 P | 00 | 06 | 46 |
| | 27 | 00 | 95 | 08 |
| | 25 | 00 | 01 | 44 |
| | 39 | 00 | 09 | 50 |
| | 42 | 00 | 16 | 36 |
| | 22 | 00 | 29 | 54 |
| | 16 | 00 | 25 | 63 |
| | 21 | 00 | 17 | 51 |
| | 44 | 00 | 14 | 93 |
| | 17 | 00 | 23 | 21 |
| | 40 | 00 | 09 | 05 |
| (5) Aakoli | 41 | 00 | 55 | 23 |
| | 21 | 00 | 49 | 05 |
| | 42/1 to 5 | 00 | 00 | 95 |
| | 73 | 00 | 64 | 52 |
| | 20 | 00 | 02 | 36 |
| | 54 | 00 | 06 | 88 |
| | 10 | 00 | 06 | 11 |
| | 55 | 00 | 02 | 39 |
| | 59 | 00 | 14 | 62 |
| | 57 | 00 | 01 | 44 |
| | 43 | 00 | 27 | 54 |
| | | | 00 | 55 |

| 1 | 2 | 3 | 4 | 5 |
|---------------------------|-----------|----|----|----|
| (6) Ravate | | | | |
| | 90 | 00 | 33 | 91 |
| | 89 | 00 | 26 | 80 |
| | 98 | 00 | 21 | 64 |
| | 78 | 00 | 01 | 98 |
| | 97 | 00 | 02 | 92 |
| | 94 | 00 | 01 | 56 |
| | 99 | 00 | 07 | 68 |
| | 102 | 00 | 40 | 88 |
| | 100 | 00 | 03 | 04 |
| | 125 | 00 | 57 | 85 |
| | 66 | 01 | 12 | 44 |
| | 130 | 00 | 08 | 14 |
| | 65 | 00 | 37 | 45 |
| | 40 | 00 | 12 | 98 |
| | 66 W.P.E. | 01 | 13 | 22 |
| | River | 00 | 12 | 69 |
| (7) Gargaon | River | 00 | 10 | 25 |
| | 97 | 00 | 16 | 70 |
| | 101 F.L. | 00 | 11 | 80 |
| | 96 | 00 | 07 | 34 |
| | 102 | 00 | 12 | 39 |
| | 94 F.L. | 00 | 03 | 44 |
| | 89 | 00 | 18 | 96 |
| | 88 | 00 | 05 | 51 |
| | 58 WPF | 00 | 51 | 88 |
| | 78 | 00 | 00 | 01 |
| | 79 | 00 | 14 | 09 |
| | 82 | 00 | 97 | 53 |
| (8) Sumadi out of Shigaon | 31(463) | 01 | 06 | 29 |
| | 34(388) | 00 | 21 | 08 |
| | 39(387) | 00 | 01 | 94 |
| | 40(385) | 00 | 33 | 93 |
| | 53(464 P) | 01 | 13 | 41 |
| | 41(386) | 00 | 06 | 32 |
| | 51(381) | 00 | 24 | 99 |
| | 52(380) | 00 | 02 | 62 |
| | 50(379) | 00 | 02 | 69 |
| | 70(377) | 00 | 20 | 06 |
| | 72(370) | 00 | 01 | 23 |
| | 65(397) | 00 | 01 | 84 |
| | 66(399) | 00 | 10 | 76 |
| | 67(400) | 00 | 07 | 52 |
| (9) Shigaon | 30 | 00 | 00 | 15 |
| | 29 | 00 | 06 | 87 |
| | 28 | 00 | 00 | 36 |
| | 31 A/B | 00 | 34 | 58 |
| | 32 | 00 | 01 | 72 |
| | 26 | 00 | 03 | 52 |
| | 81 | 00 | 10 | 27 |
| | 34 | 00 | 16 | 36 |
| | 35 | 00 | 08 | 27 |
| | 36 | 00 | 09 | 89 |
| | 80 | 00 | 24 | 13 |
| | 78 | 00 | 55 | 73 |

| 1 | 2 | 3 | 4 | 5 |
|------|------------------|-----------------------|----|----|
| (9) | Shigaon (Contd.) | 79(F.L.) | 00 | 15 |
| | | 106 | 00 | 02 |
| | | 107 | 00 | 09 |
| | | 108 | 00 | 23 |
| | | 323 | 00 | 07 |
| | | 112 | 00 | 04 |
| | | 67 | 01 | 11 |
| | | 124 | 00 | 00 |
| | | 121 | 00 | 07 |
| | | 119 | 00 | 01 |
| | | 120 | 00 | 13 |
| | | 140 | 00 | 26 |
| | | 127 | 00 | 02 |
| | | 126 | 00 | 01 |
| | | 129 | 00 | 03 |
| | | 128 | 00 | 00 |
| | | 141 | 00 | 08 |
| | | 142 | 00 | 07 |
| | | 144 | 00 | 15 |
| | | 153 | 00 | 06 |
| | | 154 | 00 | 17 |
| | | 155 A/B | 00 | 11 |
| | | 156 | 00 | 02 |
| | | 162 | 00 | 23 |
| | | 163 | 00 | 28 |
| | | 165 | 00 | 41 |
| | | 166 | 00 | 26 |
| | | 167 | 00 | 27 |
| (10) | Nevalegaon | 124/4A | 00 | 00 |
| | | 89/1 | 00 | 35 |
| | | 88 | 00 | 55 |
| | | 81 | 00 | 24 |
| | | 86/P | 00 | 59 |
| | | 85 | 00 | 10 |
| | | 82 | 00 | 47 |
| | | 83 | 00 | 41 |
| | | 79 | 00 | 58 |
| | | 121 | 00 | 11 |
| | | 115A | 00 | 23 |
| (11) | Mundavali | 52 | 02 | 57 |
| | | 57 | 00 | 22 |
| | | 72/3 | 00 | 12 |
| | | 69 | 00 | 08 |
| | | River | 00 | 03 |
| (12) | Ambatpada | Nala near Svy. No. 11 | 00 | 01 |
| | | 11 | 00 | 17 |
| | | 13/1 | 00 | 18 |
| | | 14 | 00 | 33 |
| | | 16/6 | 00 | 00 |
| | | 16/1 | 00 | 07 |
| (13) | Parnali | 22 | 00 | 10 |

[F. No. L-14014/11/2007/GP]
S. B. MANDAL, Under Secy.

नई दिल्ली, 20 सितम्बर, 2007

का.आ. 2695.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन), अधिनियम 1962 (1962 का 50) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 108(अ) तारीख 31 जनवरी 2007 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में, मैसर्स रिलायंस इंडस्ट्रीज लिमिटेड, की आन्ध्रप्रदेश में संरचनाओं से महाराष्ट्र राज्य में लातुर और उस्मानाबाद जिले के विभिन्न उपभोक्ताओं तक प्राकृतिक गैस के परिवहन के लिए मैसर्स रिलायंस गैस ट्रान्सपोर्टेशन इंफ्रास्ट्रक्चर लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को तारीख 7 मार्च, 2007 को अथवा उससे पहले उपलब्ध करा दी गई थी;

और पाइपलाइन बिछाने के संबंध में जनता की ओर से कोई आक्षेप प्राप्त नहीं हुआ है;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने के बजाए, सभी विलंगमों से मुक्त, मैसर्स रिलायंस गैस ट्रान्सपोर्टेशन इंफ्रास्ट्रक्चर लिमिटेड में निहित होगा।

अनुसूची

| मंडल/तहसील/तालुका : निलंगा | जिला : लातुर | राज्य : महाराष्ट्र | | | |
|----------------------------|---|--|--|---|--------|
| गाँव का नाम | सर्वे/हिस्सा नंबर | आर.ओ.यु. अंजित करने के लिए क्षेत्रफल | हेक्टेयर | एयर | सि-एयर |
| 1 | 2 | 3 | 4 | 5 | |
| (1) ममदापुर | 131 112 229 230 268 269 270 298 236 301 सड़क गट नं. 298 में | 00 00 00 00 00 00 00 00 00 00 00 | 17 01 03 03 10 03 01 01 16 00 09 | 20 20 10 40 70 50 20 40 30 .50 00 | |
| (2) हलाली | 115 125 10 318 108 सड़क गट नं. 318 और 14 के बीच | 00 00 00 00 00 00 | 01 01 06 09 03 03 | 40 50 40 50 80 30 | |
| (3) मिरगनहतली | 58 | 00 | 14 | 90 | |
| (4) नेलवाड | 19/ड 18/अ | 00 00 | 17 31 | 00 80 | |
| (5) ओँडा | 159 162 164 | 00 00 00 | 22 05 05 | 60 90 20 | |

| 1 | 2 | 3 | 4 | 5 |
|-------------------|-----------------------|----|----|----|
| (5) औंडा—जारी | 168 | 00 | 21 | 50 |
| | 169 | 00 | 13 | 20 |
| | 209 | 00 | 07 | 30 |
| | 207 | 00 | 11 | 50 |
| | 206 | 00 | 06 | 30 |
| | 199 | 00 | 12 | 00 |
| | 197 | 00 | 07 | 30 |
| | 196 | 00 | 05 | 20 |
| | 238 | 00 | 01 | 40 |
| | 273 | 00 | 02 | 00 |
| | 272 | 00 | 01 | 70 |
| | 276 | 00 | 00 | 60 |
| | 289 | 00 | 02 | 50 |
| | 308 | 00 | 02 | 90 |
| | 321 | 00 | 05 | 90 |
| | 324 | 00 | 15 | 90 |
| | 124 | 00 | 18 | 30 |
| | 163 | 00 | 07 | 50 |
| | 237 | 00 | 00 | 30 |
| | कालबा गट नं. 2002 में | 00 | 04 | 10 |
| (6) हसोरी (बु) | 77/ब | 00 | 60 | 70 |
| | 78/अ | 00 | 04 | 60 |
| | 79/क | 00 | 08 | 20 |
| (7) कसार—सिरसी | 169/ड | 00 | 23 | 92 |
| | 162/फ | 00 | 23 | 90 |
| | 169/ब | 00 | 30 | 90 |
| (8) हतरगा (हलासी) | 36/इ | 00 | 07 | 60 |
| | 37/आ | 00 | 35 | 30 |
| | 37/अ | 00 | 16 | 50 |
| | 22/ब | 00 | 04 | 05 |
| | 22/क | 00 | 06 | 70 |
| | 23/गा | 00 | 12 | 20 |
| | 24/आ | 00 | 16 | 00 |
| | 3/डा | 00 | 03 | 10 |
| | 4/खा | 00 | 03 | 10 |
| | 4/अ | 00 | 07 | 30 |
| | 113/अ | 00 | 04 | 50 |
| | 112/अ | 00 | 03 | 20 |
| (9) हलसी (हतरगा) | 55/अ | 00 | 00 | 70 |
| | 55/ब | 00 | 02 | 30 |
| | 51/ब | 00 | 02 | 00 |
| | 5/ब | 00 | 02 | 90 |
| | 6 | 00 | 01 | 20 |
| | 106 | 00 | 07 | 10 |
| | 98/ब | 00 | 00 | 50 |

| (1) | (2) | (3) | (4) | (5) |
|--------------------------|----------------------------|----------------------|----------------------|----------------------|
| (9) हलसी (हतरगा)—जारी | 75~ 82/क 83/ब 5/क | 00 00 00 00 | 21 06 05 01 | 30 40 40 80 |
| (10) हंद्राल | 16/ब 24/अ 25/अ 17 | 00 00 00 00 | 11 22 06 08 | 70 50 70 10 |
| (11) डोंगरगांव (हालीखेड) | 18/अ 16/ब | 00 00 | 02 02 | 30 00 |

| मंडल/तहसील/न्यायिक उमरगा | ज़िला : उम्रानाबाद | राज्य : महाराष्ट्र | | |
|--------------------------|--|--|--|--|
| (1) चाकुर | 154/1/2 155/4/1 157/1 160/1/2 161/1/3 164/3 139/1 132/1 132/3 132/5 84/1 83/1/1 75/2/2 34/1/1 33/2/1 140 132/2 75/4 75/3 72 71 82/6 | 00 | 03 37 02 03 59 16 05 16 18 02 06 15 21 12 18 02 32 04 16 00 60 38 | 40 70 20 00 60 50 00 50 80 00 90 80 90 60 50 40 40 10 20 40 40 |
| (2) बोरी | 126 131 114 259 119 | 00 00 00 00 00 | 54 22 02 36 05 | 00 60 30 60 60 |
| (3) नारंगवाडी | 39/1 15/2 14/8 223/4 | 00 00 00 00 | 32 08 08 06 | 00 70 80 40 |
| (4) पेठसांगवी | 230 215/3 215/2 247/7 247/2 216/2 | 00 00 00 00 00 | 10 30 10 04 08 23 | 20 90 60 00 40 40 |

| (1) | (2) | (3) | (4) | (5) |
|---------------------------|--------------------|--------------------|-----|-----|
| मंडल/तहसील/तालुका: लोहारा | ज़िला : उस्मानाबाद | राज्य : महाराष्ट्र | | |
| (1) चिंचोलीरेवे | 17/1/1 | 00 | 25 | 30 |
| | 13/4 | 00 | 21 | 20 |
| | 8/1 | 00 | 12 | 70 |
| (2) सास्तुर | 37/1 | 00 | 20 | 30 |
| | 11/3 | 00 | 26 | 00 |
| | 9/1 | 00 | 52 | 10 |
| | 33/1/3 | 00 | 24 | 00 |
| | 8/1 | 00 | 20 | 00 |
| (3) भातागली | 35/1 | 00 | 36 | 00 |
| | 60/1/5 | 00 | 06 | 00 |
| | 60/1/4 | 00 | 06 | 00 |
| | 60/6 | 00 | 19 | 00 |
| | 101/2 | 00 | 70 | 20 |
| (4) कानेगांव | 35/1 | 00 | 82 | 30 |
| | 36/1 | 00 | 03 | 60 |
| | 37/2/2 | 00 | 12 | 50 |
| | 41/2 | 00 | 07 | 60 |
| | 300/1 | 00 | 03 | 90 |
| | 288/1 | 00 | 49 | 80 |
| | 37/4 | 00 | 15 | 70 |
| | 38/2बी | 00 | 33 | 80 |
| | 26 | 00 | 01 | 30 |
| | 27 | 00 | 04 | 00 |
| | 22 | 00 | 17 | 00 |
| | 20/1 | 00 | 11 | 00 |
| | 301/4 | 00 | 32 | 20 |
| | 301/3 | 00 | 31 | 00 |
| (5) अरनी | 65 | 00 | 06 | 00 |
| | 68/4 | 00 | 11 | 30 |
| | 27/1/1 | 00 | 03 | 00 |
| | 63/2/1 | 00 | 06 | 20 |
| | 67/5 | 00 | 04 | 40 |
| | 5/2 | 00 | 32 | 60 |
| मंडल/तहसील/तालुका: औसा | ज़िला : लातुर | राज्य : महाराष्ट्र | | |
| (1) मंगरूल | 39/क | 00 | 08 | 90 |
| | 39/ब | 00 | 03 | 90 |
| | 39/अ | 00 | 02 | 50 |
| | 43 | 00 | 07 | 70 |
| | 62 | 00 | 10 | 60 |
| | 39/ड | 00 | 08 | 40 |
| | 60/ब | 00 | 03 | 00 |
| | 61 | 00 | 18 | 20 |
| | 63/ब | 00 | 33 | 50 |
| | 68/इ | 00 | 09 | 00 |
| | 68/ड | 00 | 09 | 00 |
| | 68/क | 00 | 06 | 00 |

| (1) | (2) | (3) | (4) | (5) |
|--------------------------------|----------------------------|--------------------|-----|-----|
| (2) गुबाल | 8/व | ०० | १८ | ०० |
| (3) लोहाटा | ६/क | ०० | २९ | ४० |
| (4) आशीच | २४५/३ | ०० | ४५ | १० |
| मंडल/तहसील तालुका : उस्मानाबाद | जिला : उस्मानाबाद | राज्य : महाराष्ट्र | | |
| (1) भंडरी | ६९/२ | ०० | ३२ | ६० |
| | ७२/१ | ०० | ०६ | ०० |
| | ७५/२ | ०० | १५ | १० |
| (2) नांदुरा | २३७ | ०० | २१ | ०० |
| | १ | ०० | ०९ | ०० |
| | ४ | ०० | ०६ | ०० |
| | १९ | ०० | ०५ | ४० |
| | २४ | ०० | ०६ | ०० |
| | २८ | ०० | ०६ | ३० |
| | २९ | ०० | ०४ | २० |
| | ४०/१ | ०० | १९ | ०० |
| | २४९ | ०० | १० | १० |
| (3) बरमगाव (खुर्द) | २७/१ | ०० | ०१ | ०० |
| | २६ | ०० | ०७ | ५० |
| (4) महादेववाडी | १८२ | ०० | ०३ | ८० |
| | नाला गट नं. १७९ और १९० में | | ०७ | ७० |
| (5) विठ्ठलवाडी | १२७ | ०० | ०० | ४० |
| | १९९ | ०० | १६ | ३० |
| | २४५ | ०० | १४ | ६० |
| | २५१ | ०० | २७ | ७० |
| (6) आनसुर्फ़ | २२२ | ०० | ०५ | १० |
| (7) पलसवाडी | ७२ | ०० | ०१ | १० |
| | १४५ | ०० | ०१ | ०० |
| | १६५ | ०० | ०४ | ७० |
| | १२३ | ०० | ११ | ८० |
| | १२२ | ०० | १० | ९० |
| (8) गावसुद | ३६ | ०० | ०९ | ६० |
| (9) उस्मानाबाद (ग्रामीण) | ४६६/२ | ०० | ०८ | ३० |
| | ६३९/२ | ०० | २३ | ५० |
| | ६३७/१ | ०० | ३४ | ७० |
| | ६३५/२ | ०० | ०६ | ४० |
| | ६६९/३ | ०० | २६ | १० |
| | ६१६/१२ | ०० | २४ | २० |
| | ६१९/६ | ०० | ०१ | १० |
| | ६२०/१ | ०० | ११ | ५० |
| | ६२०/४ | ०० | ०३ | ७० |
| | ६२०/५ | ०० | १३ | ८० |
| | ६३८/१,२ | ०० | ३५ | २० |
| | ६६८/४ | ०० | ३९ | ४० |
| | ६२८/१,२ | ०० | ४४ | ५० |
| | ६२७/१,२,३ | ०० | १९ | १० |

| (1) | (2) | (3) | (4) | (5) |
|-------------------------------|-------------------------------|-----|-----|-----|
| (9) उस्मानाबाद (ग्रामीण)—जारी | 626/15 | 00 | 98 | 20 |
| | 626/7 | 00 | 00 | 50 |
| | 626/12 | 00 | 16 | 30 |
| | 626/3 | 00 | 02 | 10 |
| | 616/17 | 00 | 02 | 70 |
| | 616/15 | 00 | 00 | 40 |
| | 616/6 | 00 | 11 | 10 |
| | 619/14 | 00 | 10 | 40 |
| | 453/6 | 00 | 27 | 20 |
| | 453/3/क | 00 | 44 | 50 |
| | सड़क सर्वे नं. 625 और 627 में | 00 | 06 | 60 |
| (10) आंबेहोल | 37 | 00 | 16 | 20 |
| (11) खानापूर | 147 | 00 | 27 | 70 |
| | 179 | 00 | 53 | 70 |
| | 184 | 00 | 21 | 20 |
| | 187 | 00 | 26 | 70 |
| | 191 | 00 | 10 | 00 |
| | 193 | 00 | 03 | 60 |
| | 200 | 00 | 01 | 90 |
| | 202 | 00 | 02 | 30 |
| | 203 | 00 | 01 | 30 |
| | 204 | 00 | 01 | 50 |
| | 206 | 00 | 17 | 20 |
| | 207 | 00 | 01 | 90 |
| | 208 | 00 | 04 | 90 |
| (12) कौडगांव | 189 | 00 | 05 | 60 |
| | 261 | 00 | 05 | 50 |
| | 235 | 00 | 05 | 60 |
| | 234 | 00 | 26 | 60 |
| | 240 | 00 | 20 | 40 |
| | 233 | 00 | 28 | 00 |
| | 231/1 | 00 | 16 | 80 |
| | 231/2 | 00 | 13 | 40 |
| | 230 | 00 | 36 | 00 |
| | 337 | 00 | 37 | 20 |
| | 336 | 00 | 18 | 70 |
| | 222 | 00 | 53 | 50 |
| (13) आंबेजवलामो | 244 | 00 | 70 | 56 |
| | 226 | 00 | 02 | 58 |
| | 247 | 00 | 60 | 42 |
| | 253 | 00 | 21 | 53 |
| | 252 | 00 | 56 | 40 |
| | झेन गट नं. 252 में | 00 | 02 | 00 |

[फा. सं. एल-14014/4/2006-जी.पी.]
एस. बी. मण्डल, अवर सचिव

New Delhi, the 20th September, 2007

S.O. 2695.—Whereas by notification of Government of India in Ministry of Petroleum and Natural Gas, number S.O. 108(E) dated: 31st January, 2007 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the Right of User in the land, specified in the Schedule appended to that notification for the purpose of laying pipeline for transportation of natural gas from Structures in Andhra Pradesh of M/s. Reliance Industries Limited, by M/s. Reliance Gas Transportation Infrastructure Limited to the various consumers of District Latur and Osmanabad in the State of Maharashtra;

And whereas the copies of the said Gazette notification were made available to the public on or before 7th March, 2007;

And whereas no objections were received from the public to the laying of the pipeline;

And whereas the Competent Authority has under sub-section (1) of Section 6 of said Act, submitted report to the Central Government;

And whereas the Central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire the Right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of user in the land, specified in the Schedule, appended to this notification, is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date of publication of the declaration, in M/s. Reliance Gas Transportation Infrastructure Limited, free from all encumbrances.

SCHEDULE

| (1) | (2) | State: Maharashtra | | |
|------------------|-------------------------------|-------------------------|-----------------------------|-----|
| | | Survey/Sub-division No. | Area to be acquired for ROU | |
| (1) | (2) | (3) | (4) | (5) |
| (1) Mamdapur | 131 | 00 | 17 | 20 |
| | 112 | 00 | 01 | 20 |
| | 229 | 00 | 03 | 10 |
| | 230 | 00 | 03 | 40 |
| | 268 | 00 | 10 | 70 |
| | 269 | 00 | 03 | 50 |
| | 270 | 00 | 01 | 20 |
| | 298 | 00 | 01 | 40 |
| | 236 | 00 | 16 | 30 |
| | 301 | 00 | 00 | 50 |
| | Road in Gat No. 298 | 00 | 09 | 00 |
| (2) Halali | 115 | 00 | 01 | 40 |
| | 125 | 00 | 01 | 50 |
| | 10 | 00 | 06 | 40 |
| | 318 | 00 | 09 | 50 |
| | 108 | 00 | 03 | 80 |
| | Road between Gat No. 318 & 14 | 00 | 03 | 30 |
| (3) Mirghanhalli | 58 | 00 | 14 | 90 |
| (4) Nelwad | 19/D | 00 | 17 | 00 |
| | 18/A | 00 | 31 | 80 |

| (1) | (2) | (3) | (4) | (5) |
|---------------------|----------------------|-----|-----|-----|
| (5) Aundha | 159 | 00 | 22 | 60 |
| | 162 | 00 | 05 | 90 |
| | 164 | 00 | 05 | 20 |
| | 168 | 00 | 21 | 50 |
| | 169 | 00 | 13 | 20 |
| | 209 | 00 | 07 | 30 |
| | 207 | 00 | 11 | 50 |
| | 206 | 00 | 06 | 30 |
| | 199 | 00 | 12 | 00 |
| | 197 | 00 | 07 | 30 |
| | 196 | 00 | 05 | 20 |
| | 238 | 00 | 01 | 40 |
| | 273 | 00 | 02 | 00 |
| | 272 | 00 | 01 | 70 |
| | 276 | 00 | 00 | 60 |
| | 289 | 00 | 02 | 50 |
| | 308 | 00 | 02 | 90 |
| | 321 | 00 | 05 | 90 |
| | 324 | 00 | 15 | 90 |
| | 124 | 00 | 18 | 30 |
| | 163 | 00 | 07 | 50 |
| | 237 | 00 | 00 | 30 |
| | Canal in Gat No. 202 | 00 | 04 | 10 |
| (6) Hasori(Bk) | 77/Kh | 00 | 60 | 70 |
| | 78/A | 00 | 04 | 60 |
| | 79/C | 00 | 08 | 20 |
| (7) Kasar-Sirsi | 169/0 | 00 | 23 | 92 |
| | 162/F | 00 | 23 | 90 |
| | 169/B | 00 | 30 | 90 |
| (8) Hatarga(Halsi) | 36/E | 00 | 07 | 60 |
| | 37/Aa | 00 | 35 | 30 |
| | 37/A | 00 | 16 | 50 |
| | 22/B | 00 | 04 | 05 |
| | 22/C | 00 | 06 | 70 |
| | 23/Ga | 00 | 12 | 20 |
| | 24/Aa | 00 | 16 | 00 |
| | 3/Da | 00 | 03 | 10 |
| | 4/Kha | 00 | 03 | 10 |
| | 4/A | 00 | 07 | 30 |
| | 113/A | 00 | 04 | 50 |
| | 112/A | 00 | 03 | 20 |
| (9) Halsi (Hatarga) | 55/A | 00 | 00 | 70 |
| | 55/B | 00 | 02 | 30 |
| | 51/B | 00 | 02 | 00 |
| | 5/B | 00 | 02 | 90 |
| | 6 | 00 | 01 | 20 |
| | 106 | 00 | 07 | 10 |

| (1) | (2) | (3) | (4) | (5) |
|------------------------------------|--|--|--|--|
| (9) Halsi (Hatarga) | 98/B 75 82/C. 83/B 5/C | 00 00 00 00 00 | 00 21 06 05 01 | 50 30 40 40 80 |
| (10) Handral | 16/B 24/A 25/A 17 | 00 00 00 00 | 11 22 06 08 | 70 50 70 10 |
| (11) Dongargaon (Halikhed) | 18/A 16/B | 00 00 | 02 02 | 30 00 |
| Mandal/Tehsi/Taluka: Umarga | District: Osmanabad | | | State: Maharashtra |
| (1) Chakur | 154/1/2 155/4/1 157/1 160/1/2 161/1/3 164/3 139/1 132/1 132/3 132/5 84/1 83/1/1 75/2/2 34/1/1 33/2/1 140 132/2 75/4 75/3 72 71 82/6 | 00 | 03 37 02 03 59 16 05 16 18 02 06 15 21 12 18 02 32 04 16 00 60 38 | 40 70 20 00 60 50 00 50 80 00 90 80 60 50 90 40 10 20 40 10 60 40 |
| (2) Bori | 126 131 114 259 119 | 00 00 00 00 00 | 54 22 02 36 05 | 00 60 30 60 60 |
| (3) Narangwadi | 39/1 15/2 14/8 223/4 | 00 00 00 00 | 32 03 03 06 | 00 70 80 40 |
| (4) Peth.Sangvi | 230 215/3 215/2 | 00 00 00 | 10 30 10 | 20 90 60 |

| (1) | (2) | (3) | (4) | (5) |
|--------------------------------------|---|--|--|--|
| (4) Peth.Sangvi | 247/7 247/2 216/2 | 00 00 00 | 04 03 23 | 00 40 40 |
| Mandal/Tehsil/Taluka : Lohara | District: Osmanabad | | State: Maharashtra | |
| (1) Chincholi Rebe | 17/1/1 13/4 8/1 | 00 00 00 | 25 21 12 | 30 20 70 |
| (2) Sastur | 37/1 11/3 9/1 33/1/3 8/1 | 00 00 00 00 00 | 20 26 52 24 20 | 30 00 10 00 00 |
| (3) Bhatagali | 35/1 60/1/5 60/1/4 60/6 101/2 | 00 00 00 00 00 | 36 06 06 19 70 | 00 00 00 00 20 |
| (4) Kanegaon | 35/1 36/1 37/2/2 41/2 300/1 288/1 37/4 38/2B 26 27 22 20/1 301/4 301/3 | 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 00 | 82 03 12 07 03 49 15 33 01 04 17 11 32 31 | 30 60 50 60 90 80 70 80 30 00 00 00 00 20 00 |
| (5) Ami | 65 68/4 27/1/1 63/2/1 67/5 5/2 | 00 00 00 00 00 00 | 06 11 03 06 04 32 | 00 30 00 20 40 60 |
| Mandal/Tehsil/Taluka : Ausa | District : Latur | | State: Maharashtra | |
| (1) Mangrul | 39/C 39/B 39/A 43 62 39/D 60/B 61 | 00 00 00 00 00 00 00 00 | 08 03 02 07 10 08 03 18 | 90 90 50 70 60 40 00 20 |

| (1) | (2) | (3) | (4) | (5) |
|---|--|--|--|--|
| (1) Mangrul | 63/B 68/E 68/D 68/C | 00 00 00 00 | 33 09 09 06 | 50 00 00 00 |
| (2) Gubal | 8/B | 00 | 18 | 00 |
| (3) Lohata | 6/C | 00 | 29 | 40 |
| (4) Ashiv | 245/3 | 00 | 45 | 10 |
| Mandal/Tehsil/Taluka : Osmanabad | District : Osmanabad | | State: Maharashtra | |
| (1) Bhandari | 69/2 72/1 75/2 | 00 00 00 | 32 06 15 | 60 00 10 |
| (2) Nandurga | 237 1 4 19 24 28 29 40/1 249 | 00 00 00 00 00 00 00 00 00 | 21 09 06 05 06 06 04 19 10 | 00 00 00 40 00 30 20 00 10 |
| (3) Baramgaon(Kh) | 27/1 26 | 00 00 | 01 07 | 00 50 |
| (4) Mahadevwadi | 182 | 00 | 03 | 80 |
| (5) Vitthalwadi | Nala in Gat No. 179 & 190 127 199 245 251 | 00 00 00 00 | 07 00 16 14 27 | 70 40 30 60 70 |
| (6) Ansurda | 222 | 00 | 05 | 10 |
| (7) Palaswadi | 72 145 165 123 122 | 00 00 00 00 00 | 01 04 11 10 | 10 00 80 90 |
| (8) Gaosud | 36 | 00 | 09 | 60 |
| (9) Osmanabad(Rural) | 466/2 639/2 637/1 635/2 669/3 616/12 619/6 620/1 620/4 620/5 638/1,2 | 00 00 00 00 00 00 00 00 00 00 00 | 08 23 34 06 26 24 01 11 03 13 35 | 30 50 70 40 10 20 10 50 70 80 20 |

| (1) | (2) | (3) | (4) | (5) |
|-----------------------|------------------------------|-----|-----|-----|
| (9) Osmanabad (Rural) | 668/4 | 00 | 39 | 40 |
| | 628/1,2 | 00 | 44 | 50 |
| | 627/1,2,3 | 00 | 19 | 10 |
| | 626/15 | 00 | 98 | 20 |
| | 626/7 | 00 | 00 | 50 |
| | 626/12 | 00 | 16 | 30 |
| | 626/3 | 00 | 02 | 10 |
| | 616/17 | 00 | 02 | 70 |
| | 616/15 | 00 | 00 | 40 |
| | 616/6 | 00 | 11 | 10 |
| | 619/14 | 00 | 10 | 40 |
| | 453/6 | 00 | 27 | 20 |
| | 453/3/C | 00 | 44 | 50 |
| | Road in Survey No. 625 & 627 | 00 | 06 | 60 |
| (10) Ambehol | 37 | 00 | 16 | 20 |
| (11) Khanapur | 147 | 00 | 27 | 70 |
| | 179 | 00 | 53 | 70 |
| | 184 | 00 | 21 | 20 |
| | 187 | 00 | 26 | 70 |
| | 191 | 00 | 10 | 00 |
| | 193 | 00 | 08 | 60 |
| | 200 | 00 | 01 | 90 |
| | 202 | 00 | 02 | 30 |
| | 203 | 00 | 01 | 30 |
| | 204 | 00 | 01 | 50 |
| | 206 | 00 | 17 | 20 |
| | 207 | 00 | 01 | 90 |
| | 208 | 00 | 04 | 90 |
| (12) Kaudgaon | 189 | 00 | 05 | 60 |
| | 261 | 00 | 05 | 50 |
| | 235 | 00 | 05 | 60 |
| | 234 | 00 | 26 | 60 |
| | 240 | 00 | 20 | 40 |
| | 233 | 00 | 28 | 00 |
| | 231/1 | 00 | 16 | 80 |
| | 231/2 | 00 | 13 | 40 |
| | 230 | 00 | 36 | 00 |
| | 337 | 00 | 37 | 20 |
| | 336 | 00 | 18 | 70 |
| | 222 | 00 | 53 | 50 |
| (13) Ambejawalge | 244 | 00 | 70 | 56 |
| | 226 | 00 | 02 | 58 |
| | 247 | 00 | 60 | 42 |
| | 253 | 00 | 21 | 53 |
| | 252 | 00 | 56 | 40 |
| | Drain in Gat No. 252 | 00 | 02 | 00 |

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2696.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 153/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/477/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th August, 2007

S.O. 2696.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 153/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/477/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 153/2004

(Principal Labour Court CGID No. 186/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. B. Periasamy : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/477/1998-IR (B-I) dated 12-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 186/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 153/2004.

2. The Schedule mentioned in that order is as follows :

“Whether the demand of the workman Shri B. Periasamy, wait list No. 301 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at H.E. Kailasapuram Branch from 06-01-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the H.E. Kailasapuram Branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-1-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in H.E. Kailasapuram Branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in

service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in

seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 301 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category(C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 301 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the

country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

(i) "Whether the demand of the Petitioner in Wait List No. 301 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M 1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict

instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M 1 and the averments of MW 1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for

each module as per Ex. M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in

violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to

modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected IDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 ILLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.*" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be*

exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also.*" He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government

is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.*" It further held that "*the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.*" Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "*the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.*" He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "*it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.*" He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "*the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.*" Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and

whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "*the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.*" In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "*in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.*" He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "*by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.*" He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASHVs. UNION OF INDIA wherein the Supreme Court has held that "*candidates included in merit list has no indefeasible right to appointment even if a*

vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala-fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "*now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable.* Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "*So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in*

an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "*they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.*" He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "*Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.*" Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of*

employment has come to an end or of ad-hoc employees, who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been

appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri B. Periasamy WW2 Sri V. S. Ekambaran |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj |

Documents Marked:—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals—not to be engaged at office/branches to do messengerial work. |
| W9 | 08-08-88 | Xerox copy of the service certification issued by H.E. Kailasapuram Branch. |
| W10 | Nil | Xerox copy of the service certificate issued by Kmamarajapuram branch. |
| W11 | 04-02-95 | Xerox copy of the service certification issued by Kailasapuram branch. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. |
| W13 | Nil | Xerox copy of the Vol. III of Deference book on Staff matters upto 31-12-95. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messengar post—V. Muralikannan. |
| | | W15 06-03-97 Xerox copy of the call letter from Madurai zonal office for interview of messengar post—K. Subburaj. |
| | | W16 06-03-97 Xerox copy of the call letter from Madurai zonal office for interview of messengar post—J. Velmurugan. |
| | | W17 17-03-97 Xerox copy of the service particulars—J. Velmurugan. |
| | | W18 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| | | W19 31-03-97 Xerox copy of the appointment order to Sri G. Pandi |
| | | W20 Feb. 2005 Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| | | W21 13-02-95 Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| | | W22 09-11-92 Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| | | W23 09-07-92 Xerox copy of the minutes of the Bipartite meeting. |
| | | W24 09-07-92 Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| | | W25 07-02-06 Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| | | W26 31-12-85 Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| | | For the Respondent/Management:— |
| | | Ex. No. Date Description |
| | | M1 17-11-87 Xerox copy of the settlement. |
| | | M2 16-07-88 Xerox copy of the settlement. |
| | | M3 27-10-88 Xerox copy of the settlement. |
| | | M4 09-01-91 Xerox copy of the settlement. |
| | | M5 30-07-96 Xerox copy of the settlement. |
| | | M6 09-06-95 Xerox copy of the minutes of conciliation proceedings. |
| | | M7 28-05-91 Xerox copy of the order in W.P. No.7872/91. |
| | | M8 15-05-98 Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | M9 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | M10 Nil Xerox copy of the wait list of Trichy Module. |
| | | M11 25-10-99 Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2697.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 155/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/406/1998-आईआर(बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2697.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 155/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/406/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 155/2004

(Principal Labour Court CGID No. 198/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Kanagasabai : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Region-I,
Trichirappalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates.

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/406/98-IR (B-I) dated 10-03-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 198/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-Cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID.No. 155/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri R. Kanagasabai, wait list No. 613 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kattumannar Kovil branch from November, 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kattumannar Kovil branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From November, 1982 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kattumannar Kovil branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance

of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 613 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 613, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status

to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a re joinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 613 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter V-A. of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc 'for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced

the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach. of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the

year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner

in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."

Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the Bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND OTHERS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri R. Kanagasabai
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri T. L. Selvaraj

Documents Marked:—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | Nil | Xerox copy of the service particulars of the Petitioner given by Kattumannar Kovil Branch |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. |
| W11 | Nil | Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikannan. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan. |

Ex. No. Date Description

| | | |
|-----|-----------|---|
| W15 | 17-03-97 | Xerox copy of the service particulars-J. Velmurugan. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial -G. Pandi. |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W20 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |

For the Respondent/Management:—

| Ex.No. | Date | Description |
|--------|----------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2698.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्यकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 161/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/528/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2698.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 161/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/528/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 161/2004

(Principal Labour Court CGID No. 223/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. T. Smarasam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I.
Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/528/98-IR (B-I) dated 19-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 223/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 161/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri T. Smarasam, wait list No. 254 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Chidambaram branch from 14-11-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Chidambaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-11-1980, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Chidambaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 254 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category(C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 254 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to

say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 254 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years; the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which

are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential

document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the

Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of

regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs.

PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement..

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VILJEEESH wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the

rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming

these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHIS & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities

and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. and OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by

settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri T. Samarasam
 WW2 Sri V. S. Ekambaram
 For the Respondent MW1 Sri C. Mariappan
 MW2 Sri T. L. Selvaraj

W17 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandi.
 W18 31-03-97 Xerox copy of the appointment order to Sri G.Pandi.
 W19 Feb. 2005 Xerox copy of the pay slip of T.Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---------|----------|---|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W21 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W24 | 07-02-06 | Xerox copy of the local Head office circular about Conversion of part time employees and redesignate them as general attendants. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W25 | 31-12-85 | Xerox copy of the local Head office circular about Appointment of temporary employees in subordinate cadre. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | | | For the Respondent/Management :— |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | Ex. No. | Date | Description |
| W9 | 18-09-97 | Xerox copy of the service certificate issued by Chidambaram branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W10 | 1980-70 | Xerox copy of the service particulars issued to Petitioner. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W12 | Nil | Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of Messengar post—V. Muralikannan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal office For interview of messenger post—J. Velmurugan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No.7872/91. |
| W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M8 | 15-05-98 | Xerox copy of the order in O. P. No: 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2699.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 254/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/444/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2699.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 254/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No.L-12012/444/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 254/2004

(Principal Labour Court CGID No. 195/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. V. Kuppan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/444/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 195/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 254/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri V. Kuppan, wait list No. 614 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mannadi branch from 02-06-81. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 02-06-81, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in State Bank of India commercial branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 614 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category(C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 614 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to

say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 614 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contend that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which

are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in W.M.P. No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential

document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the

Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. "It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of

regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs.

PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS' UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers (P.) Ltd. case reported in AJR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the

rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 IISSC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming

these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of KARNATAKA Vs. UMA DEVI, the Supreme Court has held "that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities

and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by

settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a *bona fide* in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri V. Kuppan
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex.No. | Date | Description | W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
|--------|----------|---|-----|-----------|---|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W20 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W23 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-3-97 | Xerox copy of the circular letter of zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instructions in Reference Book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | 09-07-92 | Xerox copy of the minutes of the Bipartite Meeting. |
| W9 | Nil | Xerox copy of the service certificate issued by Mannadi branch. | W27 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—Creation of part time general attendants. |
| W10 | 30-09-93 | Xerox copy of the letter from Petitioner to Chief Manager (Accounts) of Respondent/Bank. | W28 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part-time employees and redesignate them as general attendants. |
| W11 | 06-12-94 | Xerox copy of the service certificate issued by Arumbakkam branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W12 | 30-10-95 | Xerox copy of the service certificate issued by Commercial branch. | | | For the Respondent/Management :— |
| W13 | 06-02-97 | Xerox copy of the service certificate issued by Arumbakkam branch. | | | Ex.No. |
| W14 | 12-02-98 | Xerox copy of the service certificate issued by Commercial branch. | | | Date |
| W15 | Nil | Xerox copy of the administrative guidelines in Reference Book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the Reference Book on Staff matters Vol. III consolidated upto 31-12-95. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2700.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 255/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/441/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2700.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 255/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/441/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 255/2004

(Principal Labour Court CGID No. 196/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. G. Easu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/441/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 196/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 255/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri G. Easu, wait list No. 425 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Janapanchattiram branch from 15-04-83. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Janapanchattiram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 15-04-83, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in L.H.O., Chennai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 425 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 425 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such

plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 425 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No.1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively: But, when

MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner

that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the

deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 JI LII 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the

Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the

ruleds reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. and OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri G. Easu
 WW2 Sri V. S. Ekambaran

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex.No. | Date | Description | Ex.No. | Date | Description |
|--------|----------|--|---|-----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W19 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W6 | 15-3-97 | Xerox copy of the circular letter of zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-11-92 | Xerox copy of the Head office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 04-08-88 | Xerox copy of the service certification issued by Janapanchatiram branch. | W24 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W10 | 05-02-97 | Xerox copy of the service certificate issued by Royapuram branch. | W25 | 07-02-06 | Xerox copy of the local Head office circular about Conversion of part time employees and redesignate them as general attendants. |
| W11 | 13-03-97 | Xerox copy of the service certificate issued by LHO, Chennai branch. | W26 | 31-12-86 | Xerox copy of the local Head office circular about Appointment of temporary employees in subordinate cadre. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | For the Respondent/Management :— | | |
| W13 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | Ex. No. | Date | Description |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M2 | 16-07-88 | Xerox copy of the settlement. |
| | | | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2701.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 253/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/437/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2701.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 253/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/437/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 253/2004

(Principal Labour Court CGID No. 194/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. V. Jayaseelam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/437/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 194/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 253/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shr V. Jayaseelam, wait list No. 743 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at IIT Chennai branch from 12-03-81. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the IIT Chennai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 12-03-81, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Guindy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the

Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 737 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 737 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 743 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when

MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner

that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastri Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees." Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the

deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held "that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the

Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the

rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that “now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable.” Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that “merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri C. Jayaseelan
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked:—

| Ex. No. | Date | Description | W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan | |
|---------|----------|---|--|-----------|--|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W19 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan | |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W20 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. | |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. | |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W23 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. | |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. | |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. | |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of the time general attendants. | |
| W9 | 08-02-94 | Xerox copy of the service certification issued by Guindy branch. | W27 | 7-2-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. | |
| W10 | 16-02-95 | Xerox copy of the service certificate issued by Guindy branch. | W28 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre | |
| W11 | 18-02-96 | Xerox copy of the service certificate issued by Guindy branch. | For the Respondent/Management:— | | | |
| W12 | 30-1-96 | Xerox copy of the service certificate issued by Guindy branch. | Ex. No. | | | |
| W13 | 10-04-97 | Xerox copy of the service certificate issued by Guindy branch. | Description | | | |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M1 | 17-11-87 | Xerox copy of the settlement. | |
| W15 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M2 | 16-07-88 | Xerox copy of the settlement. | |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M3 | 27-10-88 | Xerox copy of the settlement. | |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M4 | 09-01-91 | Xerox copy of the settlement. | |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. | |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. | |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. | |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. | |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. | |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. | |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. | |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2702.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेत्रई के पंचाट (संदर्भ संख्या 158/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/234/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2702.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 158/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/234/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer
Industrial Dispute No. 158/2004

(Principal Labour Court CGID No. 217/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. S. Srinivasan : I Party/Petitioner
AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I, Z.O.,
Tiruchirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative
For the Management : Mr. F. B. Benjamin George,
Advocate

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/234/98-IR (B-I) dated 22-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 217/99 and issued notices to both parties. Both sides entered appearance and filed

their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 158/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Srinivasan, wait list No. 567 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief he said is he entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karur Main branch from 08-08-1970. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the Karur Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 08-08-1970, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Udagamandalam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure,

the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 567 in wait list of Zonal Office, Trichy. So far 212 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 567, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 567 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularization of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C', is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras

circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M1 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not

been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no

personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had

accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the

conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS

UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS

wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri S. Srinivasan
 WW2 Sri V. S. Ekambaram
 For the Respondent MW1 Sri C. Mariappan
 MW2 Sri T. L. Selvaraj

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-3-97 | Xerox copy of the circular letter of zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 02-02-84 | Xerox copy of the service particulars of the Petitioner given by Karur Branch |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. |
| W11 | Nil | Xerox copy of the Vol-III of Reference book on Staff matters upto 31-12-95 |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan |

| | | |
|-----|-----------|--|
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Meniai—G. Pandi |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list |
| W20 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre |

For the Respondent/Management :—

| Ex. No. | Date | Description |
|---------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2703.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकारण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 157/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/479/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2703.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/479/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 157/2004

(Principal Labour Court CGID No. 202/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. M. Tamilmani : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Tiruchirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : Mr. K. S. Sundar,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/479/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 202/99 and issued notices to both parties. Both sides entered appearance and filed

their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 157/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri M. Tamilmani, wait list No. 489 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Asaveerankudikadu branch from 1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. the year 1985 the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Asaveerankudikadu branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure,

the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 489 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 489 temporary employees were appointed and since the Petitioner was wait listed at 489, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct

to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 489 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C', is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras

circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not

been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no

personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had

accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the

conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS

UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that ‘‘the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.’’ Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIDJEEESH wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that “now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave

vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly

held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement,

the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner WW1 Sri M. Tamilmani
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri T. L. Selvaraj

Documents Marked :—

| Ex. No. | Date | Description | W17 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
|---------|----------|---|---|-----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W19 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W22 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W24 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W25 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W9 | Nil | Xerox copy of the service certificate issued by Asaveerankudikadu branch | W26 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre |
| W10 | 05-07-95 | Xerox copy of the service certificate issued by Asaveerankudikadu branch | For the Respondent/Management :— | | |
| W11 | 1993-97 | Xerox copy of the service certificate issued by Asaveerankudikadu branch | M1 | 17-11-87 | Xerox copy of the settlement. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W13 | Nil | Xerox copy of the Vol.III of Reference book on Staff matters upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M4 | 09-01-91 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M5 | 30-07-96 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai Zonal office for interview of messenger post—J. Velmurugan | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2704.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 252/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/448/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2704.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 252/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No.L-12012/448/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jyaraman, Presiding Officer

Industrial Dispute No. 252/2004

[Principal Labour Court CGID No. 192/99]

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri D. Mani : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.,
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/448/98-IR (B-I) dated 12-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 192/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 252/2004.

2. The Schedule mentioned in that order is as follows :

“Whether the demand of the workman Shri D. Mani, wait list No. 361 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Maganthalayapuram branch from 27-11-81. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Maganthalayapuram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 27-11-81, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Edyananchavadi, branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 361 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 361, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 361 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

(ii) “To what relief the Petitioner is entitled?”

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the

Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were

engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.*" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended*

application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor*

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VILEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling

for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMADEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the

settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri D. Mani WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W9 | 20-03-82 | Xerox copy of the service certificate issued by Bhel Project, Mukundarayapuram Branch. | W24 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W10 | 20-08-83 | Xerox copy of the termination notice issued by Edyanchavadi Branch. | W25 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | For the Respondent/Management :— | | |
| W12 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | Ex. No. | Date | Description |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikanhan. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 9-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list ofChennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2705.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 251/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/449/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2705.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 251/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No.L-12012/449/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 251/2004

[Principal Labour Court CGID No. 191/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Krishnamoorthy : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.,
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

The Central Government, Ministry of Labour, vide Order No. L-12012/449/98-IR (B-I) dated 12-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 191/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID. No. 251/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri A. Krishnamoorthy, wait list No. 695 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Santhavasal branch from 02-01-78. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Santhavasal branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 02-01-78, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Santhavasal branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 690 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 690, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 695 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

- (ii) “To what relief the Petitioner is entitled?”

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the

Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were

engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the ID. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected IDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997-II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended*

application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor*

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court

has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling

for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the

settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri A. Krishnamoorthy
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W20 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W9 | 17-08-88 | Xerox copy of the service certificate issued by Santhavasal Branch. | W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | For the Respondent/Management :— | | |
| W11 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | Ex. No. | Date | Description |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M4 | 9-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2706.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 259/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/459/1998-आई.आर.(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2706.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 259/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/459/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 259/2004

(Principal Labour Court CGID No. 203/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. M. Sukumaran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/459/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 203/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 259/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri M. Sukumaran, wait list No. 420 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kodambakkam branch from 04-05-84. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kodambakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 04-05-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Triplicane branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 420 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 420 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such

plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 420 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which

are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M1 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document.

It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though

the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the

question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P.LTD.

Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not

decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEEESH wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSANDASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him.

Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming

these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "It is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate

illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by

settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Sukumaran
 WW2 Sri V. S. Ekambaran

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---|-----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial —G. Pandi. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W6 | 15-3-97 | Xerox copy of the circular letter of zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W9 | 06-08-88 | Xerox copy of the service certification issued by Kodambakkam branch. | W24 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W10 | 24-01-94 | Xerox copy of the service certification issued by Anna University branch. | W25 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | For the Respondent/Management :— | | |
| W12 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | Ex. No. | Date | Description |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan | M1 | 17-11-87 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M2 | 16-07-88 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2707.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 257/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/438/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2707.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 257/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/438/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 257/2004

[Principal Labour Court CGID No. 200/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri B. Alayamani : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani, Advocates
AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/438/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 200/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 257/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri B. Alayamani, wait list No. 529 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kadambakkam branch from 10-12-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kadambakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From the year 10-12-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Triplicane branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 526 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 526, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 529 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

(ii) “To what relief the Petitioner is entitled?”

Point No.1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contend that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible

to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take

them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.*" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3).* A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the

establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and, consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back

door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHII & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."

Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account

of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri B. Alayamani WW2 Sri V. S. Ekambaram |
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |

Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |

| | | | | | |
|-----|----------|---|---|-----------|---|
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W24 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W25 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W26 | 26-03-97 | Xerox copy of the letter advising selection of part time Minial—G. Pandi. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W27 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W28 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W9 | 08-02-94 | Xerox copy of the service certificate issued by Ashoknagar Branch. | W29 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W10 | 27-06-95 | Xerox copy of the service certificate issued by Adyar Branch. | W30 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W11 | 27-06-95 | Xerox copy of the service certificate issued by Adyar Branch. | W31 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W12 | 13-02-97 | Xerox copy of the service certificate issued by Purasawalkam Branch. | W32 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W13 | 02-01-97 | Xerox copy of the service certificate issued by Aayanavaram Branch. | W33 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W14 | 10-11-97 | Xerox copy of the service certificate issued by Mint Terminus Branch. | W34 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W15 | 23-05-86 | Xerox copy of the service certificate issued by Kodambakkam Branch. | For the Respondent/Management :— | | |
| W16 | 1-09-88 | Xerox copy of the service certificate issued by North T. Nagar Branch. | Ex. No. Date | | |
| W17 | 29-11-93 | Xerox copy of the service certificate issued by Adyar Branch. | Description | | |
| W18 | 30-11-93 | Xerox copy of the service certificate issued by Santhome Branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W19 | 01-12-93 | Xerox copy of the service certificate issued by K. K. Nagar Branch. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W20 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W21 | Nil | Xerox copy of the of Reference book on Staff maters Consolidated upto 31/12/95. | M4 | 9-01-91 | Xerox copy of the settlement. |
| W22 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W23 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2708.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, चेन्नई के पंचाट (संदर्भ संख्या 260/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[स. एल-12012/457/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2708.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 260/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/457/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 260/2004

[Principal Labour Court CGID No. 204/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri D. Mohan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/457/98-IR(B-I) dated 11-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 204/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 260/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri D. Mohan, wait list No. 547 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Somangalam branch from December, 1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Somangalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From December, 1980, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Nandabakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 547 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 547, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 547 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

(ii) “To what relief the Petitioner is entitled?”

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible

to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW 1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/97 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take

them out of the principal clause 2 (oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc*" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the*

establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Numbers given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VILEESH wherein the Supreme Court has held that "the only question which falls for determination

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back

door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I. D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I. D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."

Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account

of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

| | |
|--------------------|---|
| For the Petitioner | WW1 Sri D. Mohan WW2 Sri V. S. Ekambaram |
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|--------------------|---|
| For the Respondent | MW1 Sri C. Mariappan MW2 Sri C. Ramalingam |
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Documents Marked :—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|-----------|---|---|-----------|---|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W22 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W23 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W24 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—Sri G. Pandi. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W25 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W26 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W27 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W9 | Nov. 1883 | Xerox copy of the service certificate issued by Somangulam Branch. | W28 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W10 | 04-08-92 | Xerox copy of the service certificate given by Pallavaram branch of Respondent/Bank. | W29 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W11 | 29-08-92 | Xerox copy of the service certificate issued Nandambakkam Branch. | W30 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W12 | 22-06-04 | Xerox copy of the service certificate issued by Guindy Branch. | W31 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W13 | 05-08-95 | Xerox copy of the service certificate issued by Nandambakkam Branch. | W32 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W14 | 05-08-95 | Xerox copy of the service certificate issued by Nandambakkam Branch. | For the Respondent/Management :— | | |
| W15 | Aug. 95 | Xerox copy of the service certificate issued by Nandambakkam Branch. | Ex. No. | Date | Description |
| W16 | 05-01-06 | Xerox copy of the service certificate issued by Tambaran Branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W17 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W18 | Nil | Xerox copy of the of Reference book on Staff matters Vol III consolidated upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W19 | 18-12-97 | Xerox copy of the service certificate issued by Nandambakkam Branch. | M4 | 9-01-91 | Xerox copy of the settlement. |
| W20 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W21 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2709.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 256/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/443/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2709.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 256/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/443/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer
Industrial Dispute No. 256/2004

[Principal Labour Court CGID No. 197/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. T. Kanniappan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/443/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 197/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 256/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri T. Kanniappan, wait list No. 427 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kadambakkam branch from 09-10-82. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kadambakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 09-10-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required.

any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 427 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 427 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this

Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 427 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list

Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any documents/show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have

any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days-on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the 'connected disputes

were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the

Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

1. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM

wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS; wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation." The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies

and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA VS. UMA DEVI, the SUPREME Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly

held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri T. Kanniappan
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|---|---------|-----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W120 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial —G. Pandi. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W23 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circel. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 09-11-92 | Xerox copy of the Head office circular No. 28 regarding Norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | Nil | Xerox copy of the service certificate issued by Nungambakkam Branch. | W27 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of the time general attendants. |
| W10 | 24-02-88 | Xerox copy of the service certificate issued by Kodambakkam branch. | W28 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants |
| W11 | 17-12-92 | Xerox copy of the service certificate issued by Kodambakkam branch. | W29 | 31-12-85 | Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre |
| W12 | Nil | Xerox copy of the service certificate issued by Kodambakkam branch. | | | For the Respondent/Management :— |
| W13 | 31-05-96 | Xerox copy of the service certificate issued by Purasawalkam branch. | Ex. No. | Date | Description |
| W14 | 01-07-89 | Xerox copy of the call letter for interview from Respondent/Management | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W16 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan | M4 | 09-01-91 | Xerox copy of the settlement. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennais Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99, in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2710.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 275/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/512/1998-आईआर(बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2710.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 275/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/512/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 275/2004

(Principal Labour Court CGID No. 230/99)

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri. P. Velmurungan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/512/98-IR (B-I) dated 19-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 230/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 275/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Valmurugan, wait list No. 693 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Saligramam branch from 01-01-85. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Saligramam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-01-85, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Anna Salai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-1997.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 693 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category(C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 693 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was

verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 693 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when

MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M1 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the waitlistEx. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner

that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, *mala fide* and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the

deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not *bona fide* and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the

Supreme Court has held that "settlements are divided into two categories namely : (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not *bona fide* in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he

relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSANDASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala-fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS

wherein the Supreme Court has held that "now coming to the direction that all those *ad-hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent

contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his Juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA VS. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS VS. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri P. Velmurugan
 WW2 Sri V. S. Ekambaram
 For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|--|---|-----------|---|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W18 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W3 | 24-4-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W19 | 26-03-97 | Xerox copy of the letter advising selection of part-time Menial—G. Pandi. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W20 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-3-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding Norms for sancition of messenger staff. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W24 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 27-06-87 | Xerox copy of the service certificate issued by Saligramam branch. | W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part-time general attendants. |
| W10 | 29-11-89 | Xerox copy of the service certificate issued by Purasawalkam branch. | W26 | 07-02-06 | Xerox copy of the local Head office circular about Conversion of part-time employees and redesignate them as general attendants. |
| W11 | 15-07-04 | Xerox copy of the service certificate issued by K.K. Nagar branch. | W27 | 31-12-86 | Xerox copy of the local Head office circular about appointment of temporary employees in subordinate cadre. |
| W12 | 22-07-04 | Xerox copy of the service certificate issued by Saligramam branch. | For the Respondent/Management :— | | |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. | Ex. No. | Date | Description |
| W14 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2711.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, ओद्योगिक अधिकारण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 159/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/232/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2711.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-08-2007.

[No. L-12012/232/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 159/2004

(Principal Labour Court CGID No. 218/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. A. Rathinam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I,
Z.O., Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/232/98-IR (B-I) dated 17-3-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 218/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and counter statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 159/2004.

2. The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri A. Rathinam, wait list No. 356 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at H.E. Kailasapuram branch from 23-01-85. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the H.E. Kailasapuram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 23-01-85, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in H.E. Kailasapuram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required

any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The waitlist suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 356 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 356 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this

Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 356 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption alongwith the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals alongwith the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex.

M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any

bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes

were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further

relied on the rulings reported in 1997 ILLJ 308 K.C.P.LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied

on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESHWAR where the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those *ad hoc* temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad hoc* temporary employee who has been continued for one year should be regularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door ; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on *ad hoc* basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity."

Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad-hoc* employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri A. Rathinam
 WW2 Sri V. S. Ekambaram
 For the Respondent MW1 Sri C. Mariappan
 MW2 Sri T.L. Selvaraj

W16 17-03-97 Xerox copy of the service particulars—J. Velmurugan.
 W17 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandi.
 W18 31-03-97 Xerox copy of the appointment order to Sri G. Pandi.

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|--|---|-----------|--|
| W1 | 1-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W2 | 20-4-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W21 | 09-11-92 | Xerox copy of the Head office circular No. 28 regarding Norms for sanction of messenger staff. |
| W4 | 1-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W24 | 07-02-06 | Xerox copy of the local Head office circular about Conversion of part time employees and redesignate them as general attendants. |
| W7 | 25-3-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 31-12-85 | Xerox copy of the local Head office circular about Appointment of temporary employees in subordinate cadre. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | For the Respondent/Management :— | | |
| W9 | 12-01-88 | Xerox copy of the service certificate issued by H.E. Kailasapuram branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W10 | 08-10-97 | Xerox copy of the service certificate issued by H.E. Kailasapuram branch. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W12 | Nil | Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2712.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्पाकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 162/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/527/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2712.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 162/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/527/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 162/2004

[Principal Labour Court CGID No. 224/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Kasinathan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I,
Trichirappalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/527/98-IR (B-I) dated 19-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 224/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 162/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri K. Kasinathan, wait list No. 313 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Trichy Town branch from 10-01-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Trichy Town branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-01-1983, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in STC Trichy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 313 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 313, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 313 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

(ii) “To what relief the Petitioner is entitled?”

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the

Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW 1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were

engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it

will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman

to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling

for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the

settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri K. Kasinathan
WW2 Sri V.S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri T.L. Selvaraj

| Documents Marked :— | | | | | |
|---------------------|----------|---|---|-----------|---|
| Ex. No. | Date | Description | | | |
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W21 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W22 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W23 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W24 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W25 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W26 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W27 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W28 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W9 | 23-11-83 | Xerox copy of the service certificate issued by Tiruchirapalli Town Branch. | W29 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W10 | 29-10-84 | Xerox copy of the service certificate issued by Asaveerankudikadu Branch. | W30 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W11 | 18-03-85 | Xerox copy of the service certificate issued by Ramalinga Nagar Branch. | W31 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W12 | 09-08-88 | Xerox copy of the service certificate issued by Tiruchirapalli Town Branch. | W32 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W13 | 08-08-94 | Xerox copy of the service certificate issued by Trichy Z.O. Branch. | W33 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W14 | 07-02-95 | Xerox copy of the service certificate issued by Tiruchirapalli Branch. | For the Respondent/Management :— | | |
| W15 | 07-10-95 | Xerox copy of the service certificate issued by Staff & Training College, Trichy Branch. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | 06-12-95 | Xerox copy of the service certificate issued by Tiruchirapalli Branch. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W17 | 09-01-96 | Xerox copy of the service certificate issued by Ariyalur Branch. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W18 | 04-03-96 | Xerox copy of the service certificate issued by Tiruchirapalli Town Branch. | M4 | 9-01-91 | Xerox copy of the settlement. |
| W19 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W20 | Nil | Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95. | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2713.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 274/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/514/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2713.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 274/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/514/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 274/2004

[Principal Labour Court CGID No. 229/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri K. Gajendran : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Z.O.,
Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/514/98-IR (B-I) dated 19-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 229/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and counter statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 274/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri K. Gajendran, wait list No. 579 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Anna Salai branch from 09-02-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Anna Salai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 09-02-1982 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Saidapet main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 525 in waitlist of Zonal Office, Chennai So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 525, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) “Whether the demand of the Petitioner in Wait List No. 579 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?”

(ii) “To what relief the Petitioner is entitled?”

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible

to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take

them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the*

establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back

door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his Juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."

Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the

wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri K. Gajendran
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|---------|----------|--|---|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W18 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W19 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W20 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W24 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W9 | 31-05-82 | Xerox copy of the service certificate issued by Anna Road Branch. | W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W10 | 30-10-93 | Xerox copy of the termination notice issued by Saidapet Branch. | W26 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W11 | 29-10-96 | Xerox copy of the service certificate issued by STC Mandaveli Branch. | W27 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W12 | 28-09-96 | Xerox copy of the service certificate issued by Mandaveli Branch. | For the Respondent/Management :— | | |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. | Ex. No. Date | | |
| W14 | Nil | Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. | Description | | |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M2 | 16-7-88 | Xerox copy of the settlement. |
| | | | M3 | 27-10-88 | Xerox copy of the settlement. |
| | | | M4 | 9-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2714.—औद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी एस डब्ल्यू सी आर टी आई रिसर्च सेन्टर के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय नं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 894/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-42012/111/88-डी-II(बी)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007.

S.O. 2714.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 894/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CSWCRTI Research Centre and their workman, which was received by the Central Government on 24-8-2007.

[No. L-42012/111/88-D-II(B)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT-II, CHANDIGARH**

Presiding Officer : SHRI KULDIP SINGH

**CASE I.D. No. 894/2k5,
Registered on : 12-09-2005**

Date of Decision : 11-06-2007

PAWAN KUMAR

..PETITIONER

Versus

The Management of CSWCRTI Research Centre, Sector-27, Madhya Marg, Chandigarh and Another Through its Office Incharge

..RESPONDENT

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi,
Advocate

For the Management: Mr. M. L. Basur, Advocate

AWARD

This a reference under Section 10 of the I.D. Act, 1947, for short "Act" received from Government of India, Ministry of labour, vide their no.-L-42012/111/88-D-II(B), dated 1-9th Nov., 1989. The reference reads as under:

"whether the action of the Management of CSWCRTI, research centre, Chandigarh in terminating the services of Shri Pawan Kumar S/o Shri Ram

Pratap, daily paid worker w.e.f. 25th May, 1988 is just, fair and legal? If not what relief the worker concerned is entitled to?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri. G.S Gaddu, Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photo copy of the judgments of the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 1st April, 1984; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workman withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus the termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not an Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 25th May, 1988. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e one who had served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on

even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G.S Gaddo proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produce by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore, is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S Gaddu, Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed of the same by auction besides by distributing the same among the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa reported as 1978 LAB I.C. 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down, that in an establishment where there is a systematic activity, organized by co-operation between the employer and employees, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an

Industry in the enterprise, *prima facia*. Their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindered adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala, and, therefore, it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the Management have admitted that a settlement was arrived at between the parties during the course of proceedings in the labour court at Ambala. The terms of settlement reads as under:

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal Ambala,
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the Union or the workman concerned withdrew their cases from the Labour Court at Ambala.
3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.
4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C. (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In

reply to the claim made by the workman, in para no. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workmen was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub Section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of Deccan Tile Works Vs. Their workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding *ipso facto* on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of Sub-section 2 of the 19 of the Act. In this regard, besides the case of Deccan Tile Works (Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988.

The workman performed his part of the contract by withdrawing his claim from the Labour Court, Ambala. The Management re-employed him but terminated his service in violations of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of sub-section 2 of the 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 sub-clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the act and the same is declared as bad in law. The disengagement done by an act, which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of the Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statute. Thus the workman is to be treated in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favour of the workman. In terms of section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre,

Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. As per his own claim he had joined service with the Management on 1st October, 1957. If he was minimum of 18 years of age at that time by now he is round about 70 years of age and cannot be presumed to be eligible for the service of the Management. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs.50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2715.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी एस डब्ल्यू सी आर टी आई.रिसर्च सेन्टर के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 893/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-42012/105/88-डी-II(बी)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2715.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 893/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of CSWCRTI Research Centre and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-42012/105/88-D-II(B)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : SHRI KULDIP SINGH

CASE I.D. No. 893/2k5

Registered No: 12-09-2005

Date of Decision : 11-06-2007

ASHWANI KUMAR

PETITIONER

Versus

The Management of CSWCRTI Research Centre, Sector-27, Madhya Marg, Chandigarh and Another Through its Office Incharge

RESPONDENT

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi
Advocate

For the Management: Mr. M. L. Basur, Advocate

AWARD

This a reference under Section 10 of the I.D. Act, 1947, for short "Act" received from Government of India, Ministry of labour, *vide* their No.-L-42012/105/88-D-II(B), dated 3rd Nov., 1989. The reference reads as under:

"whether the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of Shri Ashwani Kumar S/o Shri Harbans Lal, daily paid worker w.e.f. 27th May, 1988 is just, fair and legal? If not what relief the worker concerned is entitled to?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri. G.S Gaddu, Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photo copy of the judgments of the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 1st September, 1981; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour court, the parties arrived

at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workman withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show-cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus the termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not an Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement, therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on 27th May, 1988. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e one who had served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be re-employed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wages was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G.S Gaddu proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produced by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and

fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties, on 4th April, 1988 and before terminating his services, no notice was given to the workman, and nor to his Union, that no work was available as no funds were available, therefore, no work could be done and, therefore, there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He, however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose of the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore, is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S Gaddu, Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed of the same by auction besides by distributing the same among the workers on payment. The Hon'ble Supreme Court in a famous full Bench of seven Judges decision in the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa* reported as 1978 LAB I.C 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down, that in an establishment where there is a systematic activity, organized by co-operation between the employer and employees, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, *prima facie*, their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala, and, therefore, it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the

proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the Management have admitted that a settlement was arrived at between the parties during the course of proceedings in the Labour Court at Ambala. The terms of settlement reads as under:

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal, Ambala.
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the Union or the workman concerned withdrew their cases from the Labour Court at Ambala.
3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.
4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C (C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para No. 6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back in service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workman was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of *Shukla Mansika Industry Private Ltd. Vs. workmen* (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees' Union, reported as 1997 2 LLJ 631, highlighted the object of Sub-Section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace,

accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e., 8th April, 1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of *Deccan Tile Works Vs. Their Workmen* reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding *ipso facto* on the expiry of the period as mentioned in the Sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of Sub-Section, (2) of the section 19 of the Act. In this regard, besides the case of *Deccan Tile Works(Supra)*, *State of Kerala Vs. Antony Decruz* reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court, Ambala. The Management re-employed him but terminated his service in violations of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants, therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of Sub Section 2 of the Section 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated

the services of the workman in violation of Section 19 sub Clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the act and the same is declared as bad in law. The disengagement done by an act, which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of the Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statute. Thus the workman is to be treated, in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favor of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that what for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs.50,000/- as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to.

In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2716.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी एस डब्ल्यू सी आई आई रिसर्च सेन्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 889/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-42012/113/88-डी-II(बी)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2716.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 889/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of CSWCRTI Research Centre and their workmen, received by the Central Government on 24-8-2007.

[No. L-42012/113/88-D-II(B)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : SHRI KULDIP SINGH

CASE I.D. No. 889/2k5

Registered On : 12-09-2005

Date of Decision : 11-06-2007

Baldev Singh

Petitioner

Versus

The Management of CSWCRTI Research Centre,
Sector-27, Madhya Marg, Chandigarh and Another
Through its Office Incharge

Respondent

APPEARANCE

For the Workman : Mr. Jasvinder Kumar Bakshi
Advocate

For the Management: Mr. M. L. Basur, Advocate

AWARD

This a reference under Section 10 of the I.D Act, 1947, for short "Act" received from Government of India, Ministry of labour, vide their no.-L-42012/113/88-D-II(B), dated 9th Nov., 1989. The reference reads as under:

"whether the action of the Management of CSWCRTI, research centre, Chandigarh in terminating the services of Shri Baldev Singh S/o. Shri Tota Ram daily paid worker w.e.f. 26th May, 1988 is just, fair and legal? If not what relief the worker concerned is entitled to?"

The notice of the reference was given to the parties who appeared through their counsel and filed their pleadings in the shape of statement of claim and replication by the workman, Written Statement by the Management. The workman supported his claim with his affidavit whereas the Management tendered the affidavit of Shri. G.S Gaddu, Assistant Admn. Officer. The parties have also placed on record. A copy of the agreement claimed to have been entered into between the parties in presence of the Assistant Labour Commissioner (C), Rohtak on 4th August, 1988. They have also produced copies of other documents besides photo copy of the judgments of the Hon'ble Supreme Court and that of Punjab and Haryana High Court.

The claim of the workman is that he had joined service with the Management on 1st October, 1957; and that his services were terminated by the Management. Thereupon the matter was taken to the Labour Court, Ambala. During the proceedings in the said Labour Court, the parties arrived at a settlement in presence of the ALC by which the Management agreed to re-employ the workers including the petitioner, total 20 in number. As a follow up of that agreement the workman withdrew his dispute. He was re-employed by the Management w.e.f. 8th April, 1988, but his services were again terminated on 26th May, 1988, without giving him any reason, compensation and without holding any inquiry or giving any show cause notice. Moreover, the respondents did so without terminating the settlement arrived at between the parties. Thus the termination of services of the workman was bad in law, unfair, unjust and illegal. He prayed for declaring the order of termination of services of the workman as bad in law and reinstating him with all benefits including of back wages.

The claim of the workman has been opposed by the Management on various grounds. It is their claim that the Management is not an Industry as defined by the Section 2-J of the Act, therefore, the reference is bad. On merit it is their submission that the workman was engaged as a daily wager in May, 1984 and he did not work for 240 days continuously in the year before the date of his disengagement therefore, he has no right to claim. Claiming that the termination of the workman was legal, it is stated by the Management that since the services of the workman were no more required, therefore, those were terminated on

1st August, 1986. Admitting that a settlement was arrived at between the parties, according to which the workers were categorized in two i.e one who had served the Management for 240 days, and two those who had not served them for that period. It was further agreed that those who were retrenched on 21st Dec., 1987 will be re-employed in the same capacity from the date they withdrew the cases filed against the Management. According to the agreement the 20 workmen including the petitioner were to be reemployed on their withdrawing the cases. However, there was no guarantee that their services will not be terminated later on even if the work did not allow them to be retained in service. Thus their services could be terminated if the work was not available for them and the matter regarding the back wage's was to be referred to the Tribunal for judicial, mutually by the parties. The present reference having not been made for back wages, therefore, this Tribunal has no jurisdiction to take contingency of that matter. Since the workman was not covered by any of the provisions of the Act, therefore, he is not entitled to any relief including under Section 25-F of the Act.

The workman in his replication disputed the claim of the Management and reiterated the claim made by him in the Claim Statement. The workman in his oral statement recorded on 8th April, 1993 also made a similar claim. He denied that he had not served for 240 days before the date of termination of his services. The witness for the Management, G.S Gaddo proved his affidavit and stood to the cross examination of the counsel for the workman. He admitted that the goods produce by the Management was distributed among the workers on market rates. He further admitted that for the sale of the timber, grass and fruits, tenders used to be called from the market. He admitted that an agreement was arrived at between the parties on 4th April, 1988 and before terminating his services, no notice was given to the workman, and all nor to his Union, that no work was available as no funds were available, therefore, no work could be done and therefore there was no requirement of the workman. He further stated that the workmen were given assurance that whenever the job was available, it will be given to them and many workers had retired and many were made regular; and that on the retirement of senior workmen the juniors were made regular. He however, denied that there was vacancy of unskilled workers available as a result of regularization of the seniors and on the retirement of some of them.

I have gone through the file and have also considered the submissions made by the parties. Before considering the case of the parties on merit, I would like to dispose off the preliminary objection raised by the Management that since the Management is a research institute, not engaged in any commercial activity, therefore, is not an Industry and in view of that the workman cannot claim to be a workman. In my opinion there is no merit in this claim of the Management. In his statement, made by G.S Gaddo,

Administrative Officer admitted that the Management produces grass, fruit, vegetable etc. and disposed off the same by auction besides by distributing the same among the workers on payment. The Hon'ble Supreme Court in a famous full bench of seven judges decision in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa reported as 1978 LAB I.C 467, has laid down the criteria to declare an establishment, corporation, institute an Industry. The test they have laid down, that in an establishment where there is a systematic activity, organized by co-operation between the employer and employees, for the production or distribution of goods and services, calculated to satisfy human wants and wishes, there is an Industry in the enterprise, *prima facia*. Their Lordship further held that even the professions, clubs, educational institution cooperatives, research institutes and other kindred adventures, if fulfilled the triple test, are an Industry. In view of the evidence produced by the parties there remains no doubt that the Management was an Industry. The Management, by their conduct also, admitted themselves to be an Industry, as they submitted themselves to the jurisdiction of the conciliation officer, to the jurisdiction of Labour Court, Ambala, and, therefore, it does not lie in their mouth now to claim that they are not an industry.

The claim of the workman is that the Management have terminated his services on 26th May, 1988, in violation of the provisions of settlement arrived at between the parties during the course of trial of the dispute in the Labour Court, Ambala. The workman has in a way alleged the violation of agreement entered into between the parties under section 12 of the Act. This section reads that whenever an Industrial Dispute exists or is apprehended, the conciliation officer shall hold conciliation proceedings. During the proceedings, he shall make efforts about the settlement of the dispute and for that purpose, he will do all that he thinks fit for the purpose of bringing the parties to come to a fair and amicable settlement and if a settlement is arrived at he will send the report thereof to the appropriate Government together with a memo of settlement signed by the parties to the dispute. Copy of the settlement arrived at between the parties on 4th April, 1988, is on record and the parties including the Management have admitted that a settlement was arrived at between the parties during the course of proceedings in the Labour Court at Ambala. The terms of settlement reads as under:—

1. It is agreed by both the parties that all the workmen who have been retrenched on 21st Dec., 1987 will be re-employed in the same capacity w.e.f. the date the Union or the individual workers, withdrew the cases under process before Labour Court/Tribunal Ambala.
2. It is agreed by both the parties that the 20 workmen whose name exist in Annexure-II of the settlement will be employed provided the

Union or the workman concerned withdrew their cases from the Labour Court at Ambala.

3. It is agreed by both the parties that the issue of back wages and continuity of service will be referred to the Tribunal mutually for judicial verdict for relief to the workers.
4. It is agreed by both the parties that the implementation report of the settlement will be sent to the A.L.C(C), Rohtak by 30th April, 1988.

The parties have admitted that after the settlement, the Management had taken all the 20 workers, including the workman, back in service. The workman has claimed that he was taken back in service on 8th April, 1988. In reply to the claim made by the workman, in para no.6 of his Claim Statement, the Management stated that the claim made by the workman was a matter of record. They did not deny that the workman was not taken back on service on 8th April, 1988 as a consequence of settlement arrived at between the parties. They also did not dispute that the services of the workman was disengaged on 26th May, 1988, although they claimed, in para 3 of their Written Statement, that the reference under hand is regarding termination made on 3rd August, 1988, which is not the claim even of the workman nor it is the reference received from the Government of India. Thus there is no dispute that the workmen was re-employed on 8th April, 1988 and that his services were terminated on 26th May, 1988.

Hon'ble Supreme Court of India, in the cases of Shukla Mansika Industry Private Ltd. Vs. workmen (1977) 2 LLJ 339 and Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank employees Union, reported as 1997 2 LLJ 631, highlighted the object of sub-section 2 of Section 19 of the Act. According to their Lordships, the object of Section 19 of the Act is to ensure that once the settlement is arrived at, there prevails peace, accord and cordiality between the parties, during the period agreed upon and if settlement does not require to be altered for some reasons or the other, the same climate prevails for by extension of the settlement by operation of law. There is option given to either party to terminate the settlement by a written intimation. After the expiry of two months from the date of such notice, the settlement will stand terminated. This is in accordance with the policy of settlement of Industrial disputes which is the principle object underlying the provisions of the Act.

The plain reading of this provision shows that the settlement arrived at between the parties remains binding on them for a period (1) as agreed upon by the parties or (2) for six months from the day on which the memo of settlement was signed by them. In this case the parties did not agree to the period for which the settlement was to remain force. The agreement arrived at between them was thus to remain in force during the period of six months from the day when the settlement came into force i.e. 8th April,

1988. The settlement, therefore, could not be terminated by the parties before the expiry of six months. In this regard, I borrow the reasoning given in the case of Deccan Tile Works Vs. Their workmen reported as (1960) 2 LLJ 298. It is also settled principle of law that the settlement so arrived at does not cease to be binding ipso facto on the expiry of the period as mentioned in the sub-section. It is also not open to the party to terminate or unilaterally repudiate the settlement without complying with the requirements of sub-Section, 2 of the 19 of the Act. In this regard, besides the case of Decan Tile Works(Supra), State of Kerala Vs. Antony Decruz reported as (1966) 1 LLJ 373, may be referred to. Thus as per the provision of Section 19(2) of the Act and the law laid down by the Apex Court and the High Courts it was not open to the Management to terminate the settlement arrived at between the parties on 4th April, 1988. The workman performed his part of the contract by withdrawing his claim from the Labour Court Ambala. The Management re-employed him but terminated his service in violations of provisions of Section 19(2) of the Act. The Management has given the reasons that since they did not have the grants therefore, there was no work available, for doing which, the workman could be engaged. Thus his services were terminated. This claim of the Management is without any merit rather it was in violation of the settlement arrived at between the parties. By their conduct the Management violated the sanctity of the settlement which was protected by Section 19(2) of the Act. The action of the Management was illegal and it is declared so.

In terms of sub-section 2 of the 19 of the Act, the Management could not terminate the settlement unilaterally. Since by the operation of the statute the workman is to be treated to be in the service of the Management for 8 months which means not less than 240 days within 12 months preceding the date of termination of his services, therefore, he was entitled to the protection under Section 25-F of the Act as well. It is clear from the pleadings of the parties that the Management terminated the services of the workman in violation of Section 19 sub Clause 2 and Section 25-F of the Act, therefore, their action was in violation of the provisions of the act and the same is declared as bad in law. The disengagement done by an act, which is declared as bad in law, is quashed.

There is another aspect of the matter. Since the action of the Management in terminating the services of the workman has been declared bad in law and has been quashed, therefore, the workman is treated to be in the employment of the Management for full six months, from the date he was taken back in employment i.e. 8th April, 1988. As per the effect of the Section 19(2) of the Act, the settlement could not be treated to have been terminated until the expiry of two months, from the date on which a notice in writing of the intention of the party to terminate the settlement is given. In this case no such notice was

given by the Management and they unilaterally terminated the services of the workman within 6 months which they were not entitled to do under the statue. Thus the workman is to be treated, in the employment of the Management for further two months rather till date since the Management did not disclose their intentions to terminate the settlement even after the expiry of six months, from the date of the settlements. In this situation there is no merit in the claim of the Management that since the workman had not served them for 240 days preceding the date of his disengagement, therefore, he is not entitled to the protection under Section 25-F of the Act. The situation is rather in favour of the workman. In terms of Section 19(2) of the Act, he is to be treated to be in the employment of the Management for at least 8 months from 8th April, 1988 as his services could not be terminated before that without a notice and the Management did not issue any such notice.

In view of the discussion made above, I hold that the action of the Management of CSWCRTI, Research Centre, Chandigarh in terminating the services of the workman, daily paid worker, w.e.f. 26th May, 1988 was unjust, unfair and illegal. Therefore, the workman is to be treated on the employment of the Management all through this period as if there was no order of termination of his services.

The next question which arises is as to what relief the workman is entitled to. As per his own claim he had joined service with the Management on 1st October, 1957. If he was minimum of 18 years of age at that time by now he is round about 70 years of age and cannot be presumed to be eligible for the service of the Management. It is also a fact that he did not work for the Management from the date his services were terminated in the year 1998. He has also not claimed that during this period he has remained not gainfully engaged. Thus he is not entitled to the back wages, but he is entitled to all service benefits including his regularization as if he was entitled for that for to the termination of his services by the Management. He is also entitled to compensation for the sufferings at the hands of the Management during this period and for all the service benefits he was entitled to. I, therefore, direct the Management to pay an amount of Rs.50,000 as one time compensation to him for the suffering he received. The Management is directed to examine the case of the workman within three months from the date this award becomes enforceable to find out as to what benefits he is entitled to. In case the Management fails to do it, the workman shall also be entitled for the interest on the amount of compensation awarded to him at the rate of 9% p.a from the date the Management appeared in this Tribunal i.e. on 12th Dec., 1990. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2717.——ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी पी डब्ल्यू.डी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 815/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-42011/55/89-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2717.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 815/2005) of the Central Government Industrial Tribunal-Cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.P.W.D. and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-42011/55/89-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case I. D. No. 815/2k5

Registered on : 7-9-2005

Date of Decision : 17-5-2007

Jaswinder Singh C/o CITU : Petitioner
Office Gandhi Chowk,
Pathankot-145024 (Punjab)

Versus

The Executive Engineer, Madhopur, : Respondent
Central Division, CPWD, Madhopur

APPEARANCE

For the Workman : Mr. M. K. Dogra
Advocate

For the Management : Mr. Arun Walia
Advocate

AWARD

The Government of India vide their order No. L-42011/55/89-IR(DU) dated 29/30th Nov., 1994 referred the following dispute for the adjudication of this Tribunal :—

“Whether the action of the Management of Executive Engineer, Madhopur Central Division, C. P.W.D. Madhopur in terminating the service of Sh. Puran Chand and Sh. Jaswinder Singh, Muster rolls workers is legal and justified? If not, to what relief the workmen are entitled to?”

The notice of the reference was given to the parties. The workmen filed his claim Statement, to which the Management filed the reply. The workmen filed replication and his affidavit, whereas the Management filed the affidavits of S/Sh. Rajesh Banga and B. D. Bansal, Executive Engineers. The Management also filed the affidavit of Sh. Subhash Solanki and that of the Avtar Singh, Executive Engineer but did not produce them as a witness. Besides the workman, witnesses of the Management namely B. D. Bansal and Rajesh Banga came in the witness box and proved their affidavits.

It may be noted that on 16th August, 1999, one of the workman, Puran Chand, filed an application that since he has been engaged and confirmed on a regular post in the Ranjeet Sagar Dam, therefore, he does not want to prosecute his case; and that his case may be dismissed as withdrawn. His application was attested by the Sarpanch of his village. His case, therefore, was treated to have been withdrawn by him. However the court directed that the claim of Jaswinder Singh, another workman, shall proceed and will be considered on merit. It was also ordered that casebe listed for further proceedings i.e. for the evidence of the workman, in this way the claim Sh. Puran Chand was treated to have been withdrawn. Now the claim of other workman Jaswinder Singh remains to be considered on merit i this reference.

Sh. Jaswinder Singh has claimed that he was appointed as Beldar on a salary of Rs. 360/- per month on 9th July, 1979 and he served them upto 24th May, 1991, on which day his services were terminated in violation of provisions of the I.D. Act, 1947, hereinafter to be referred as “Act”. That the workman was not given any show cause notice nor was charge sheeted. No inquiry was held against him before the termination of his services which act of the Management was malafide and an unfair labour practice. That the juniors of the workman were retained by the Management whereas his services were terminated. They also engaged fresh hands without providing opportunity to the workman to serve them.

The claim of the workman has been opposed by the Management stating that the workman was engaged on muster rolls w.e.f. 9th July, 1979 but he himself left the work on 1st July, 1981, without any information to the Management admitting that the workman was engaged as a Beldar on a monthly salary of Rs. 60/- per month, they denied that his services were terminated by the Management with malafide intentions or by resorting to unfair labour practice. According to them the workman was engaged on work need basis on muster rolls and he suddenly left the job without his disclosing his whereabouts, therefore, he was presented to have left the job on 1st July, 1981. They further stated that the workman had not served the Management for 240 days, therefore, no notice under Section 25-F of the Act was required to be issued to him nor he is entitled to relief under that provision. Denying that the workman ever approached the Management for relief they have claimed that no such representation was

made except the demand notice. They also denied that any junior of the workman was retained while the services of the workman were terminated or the Management recruited any fresh hands without giving option of working to the workman. According to them, there is no basis for the claim of the workman, therefore, the claim same may be rejected.

In the replication the workman only reiterated the facts already stated by him in the statement of claim. He contested the claim of the workman that he himself had left the job on 1st July, 1991 and stated that during his engagement he never absented from duty. Thus he served the Management continuously for more than 240 days. He has further claimed that the Management had admitted before the CAT that the workman had served them for 240 days, but they did not comply with the provisions of Section 25-F of the Act before terminating his services, therefore the disengagement of the workman is bad in law and the same may be declared so.

The workman, in his statement, recorded on 24th April, 2004 stated that his juniors Dev Raj, Raj Kumar, Mohan Lal and Surinder Kumar, who are posted at different places have been retained by the Management whereas they terminated his services. He further claimed that he was not given any termination notice; that he is unemployed right from the day of termination of his services and is dependent upon the pension of his father. The witnesses of the Management proved their affidavits exhibit M-1 and 2. Shri Bansal, when cross examined stated that the four persons Dev Raj, Raj Kumar and Mohan Lal were not appointed after the termination of the workman. In the same breath he stated that only Dev Raj and Raj Kumar were appointed after the termination of services of the workman, who are still in service. Rajesh Banga, another witness of the Management admitted that no notice was served upon the workman as he himself had abandoned job. He was also not paid compensation nor any inquiry was held against him. He further stated that no juniors of the workman such as Dev Raj, Surinder, Mohan Lal are working with the Management. He again stated they are working but they are not juniors to the workman.

The disputed question which comes for consideration of this Tribunal now is whether the services of the workman were terminated by the Management, without following the provisions of the Act and the principles of natural justice or that he had abandoned the job himself without informing the Management. The Management has also claimed that the workman had not served the Management for 240 days, before he left the job, a fact which is contested by the workman. If we go through the pleadings of the parties I find that the Management admitted, both in their Written Statement as well as in the affidavits of their witnesses that the workman had served the Management from 9th July, 1979 to 1st July, 1981. They claimed that the workman did not serve them for 240 days before leaving the job whereas the workman claims that Management had terminated his service illegally on 24th May, 1981. Except his own affidavit

and statement made before the Court, the workman has failed to produce any evidence that he was disengaged from service on 24th May, 1981. The Management has admitted that he had served the Management upto 1st July, 1981. On their part, they have not produced any record to show that the workman had absented from his duty or that he had abandoned the job. The two witnesses examined by them now here claimed that the workman was serving under them, when he abandoned the job. The Management admitted that no notice was issued to the workman after, as is claimed by them, he stopped coming for the work. They only gave the explanation that since the workman was working on the muster rolls and when he did not report for duty it was presumed that he has abandoned the job. The claim of the Management is not justified in the face of provisions of Section 25-F of the Act as they have failed to show that the workman did not continuously served them for 240 days 12 months before 1st July, 1981, therefore, it has to be taken that the workman had served the Management for 240 days 12 months preceding the day when his services are claimed to be disengaged. However, the question still remains whether it was the case of disengagement or abandonment of service. It is on record that no notice nor any charge sheet was served upon him nor any inquiry was held. The Management also admitted that through their witnesses that the workman has not paid any compensation before his disengagement.

As regards the question of abandonment I find no evidence to show that the workman had abandoned the job as is claimed. Since the workman is shown to have worked for 240 days for the Management 12 months before the termination of his services he earned a statutory right and protection of Section 25-F of the Act. The Management did not hold inquiry to find out whether the workman had abandoned the job or was prevented by circumstances, beyond his control to report for duty or it was a case of termination of his services. In the absence of any such evidence it has to be taken that it was a case of termination of his services as is claimed by the workman. The Management has admitted that they had not followed the provisions of Section 25-F of the Act as neither they gave any notice to the workman nor paid him retrenchment compensation, therefore, the disengagement of the workman was the termination without following the provisions of the Act. The termination is held to be illegal, bad in law and against the provisions of the Act and principles of natural justice.

The next thing to be seen is whether the Management further violated the provisions of the Act by retaining the juniors of the workman in service while terminating his services. The witnesses of the Management have made contradictory statement in this regard but the sum and substance of their statements is that Messrs. Dev Raj, Raj Kumar, Mohan Lal and Surinder Kumar still working with the Management although Sh. B. D. Bansal, stated that only two of them are working. The Management has claimed that the persons who are working are not juniors to the

workman, although Mr. Bansal admitted that Dev Raj and Raj Kumar were appointed after the workman was relieved after job. They have, however, not produced an evidence to show that the Management had given option to the workman to work before they engaged Dev Raj and Raj Kumar who are still working. On this account also the Management has failed to show that before appointing Dev Raj and Raj Kumar, they have given option to the workman, as was required under Section 25-F of the Act. The Management has further failed to produce any evidence to show that the other two persons Mohan Lal and Surinder Kumar were not juniors to the workman, although Rajesh Banga, another witness of the Management, claimed that they are not working with the Management. In order to substantiate their claim the Management produced any evidence such as the seniority list, the muster rolls and any accounts statement to show as to since when those persons were engaged and whether they were engaged before the engagement of the workman or thereafter. The Management has failed on this account also.

After going through the pleadings of the parties and evidence available on record I am of the opinion that the action of the Management, Executive Engineer, CPWD, Madhopur in disengaging the workman w.e.f. 1st July, 1981 was illegal and unjustified. They have failed to prove that it was not the case of illegal termination of service of the workman but the case of abandonment. Therefore, I quash the termination of the workman and treat him to be in service as if there was no order of termination of his services. The Management also violated the provisions of Section 25-F of the Act, by retaining his juniors or in the alternative by engaging fresh hands without giving option to the workman to serve the Management.

Now the question arises as to what relief the workman is entitled to. Neither it is claimed nor shown that the workman was recruited by duly established process by the Management. It is claimed by them that the workman was engaged on muster rolls, therefore, it cannot be stated that his engagement was by a regular process established by law. In the light of judgement of Hon'ble Supreme Court in the case of **Secretary of State of Karnataka Vs. Uma Devi, reported as 2006 (SCT 462)**, the reinstatement of the workman cannot be ordered. Even otherwise his disengagement had been done about 26 years ago and what was his age at that time and whether he is still fit for the service of the Management is a question which cannot be answered in the absence of evidence on the file. The Management has claimed that there is work with them for which the workman can be engaged. The fact remains that the workman has suffered as a result of the illegal act of the Management. They did not give him the compensation, for which he has contested all these years. Taking all the circumstances into the consideration I hold that the workman is entitled to the relief and I direct the Management to pay him Rs. 50,000 as one time compensation for the wrong done to him by the Management by terminating his

services without following the provisions of the Act and natural justice. The Management is given three months' time to pay this amount to the workman from the day the award becomes enforceable failing which the workman shall also be entitled to interest on the amount awarded to him as compensation @ 9% D.A from the date the Management filed their Written Statement, that is, 30th May, 1995 as they had known about the claim of the workman on that day but still they did not try to remedy the wrong. The award is passed in favour of the workman. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2718.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चंडीगढ़ के पंचाट (संदर्भ संख्या 294/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-40012/459/2000-आईआर(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2718.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 294/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 24-8-2007.

[No. L-40012/459/2000-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : Shri Kuldip Singh

Case I. D. No. 294/2005

Registered on : 11-08-2005

Date of Decision : 24-5-2007

Shiv Singh Thapa

S/o Sh. Manohar Singh

C/o BMS Office, 118-A,

Sector-30-B, Chandigarh-160001.

: Petitioner

Versus

Principal General Manager,

Telecom, Sector-18, Chandigarh.

: Respondent

APPEARANCE

For the Workman : Mr. M. R. Dhiman, A.R.
 For the Management : Mr. G. C. Babbar, Advocate

AWARD

The workman continues to be absent. On the last date of hearing his representative stated that he has no instructions to appear in the case. Thereupon fresh notice under registered cover *vide* postal receipt No. A-207 dated 4th of May, 2007 was issued to him. The registered cover carrying the notice has not been received back unserved nor the workman is present. The presumption is that the workman has received the notice but is not present. The perusal of the interim orders show that the workman never appeared in the case in person. From this I am satisfied that the workman is no more interested in his case. That is why he has lost contact with his representative and has also not responded to the notice issued by this Tribunal under registered cover.

The Government of India *vide* the order Ministry of Labour No. L-40012/459/2000/IR(DU) dated 1-2-2001 desired to know whether the action of the Management of Department of Telecom, Chandigarh in terminating the services of Sh. Shiv Singh Thapa S/o Sh. Manhor Singh w.e.f. 1-3-99 is just and legal ? If not, to what relief the workman is entitled ? The workman in response to the notice of the reference filed statement of claim and stated that he was appointed as Security Guard in 10th of Feb., 1998 on a monthly salary of rupees 1900 through M/s. Sainik Industrial Guards, 801, Sector 2, Panchkulla and he worked for the management till 28th of February, 1999; and that his services were terminated w.e.f. 1st of March, 1999 without any notice, charge sheet or enquiry nor he was paid any retrenchment compensation or wages for the notice period. The Management retained juniors of the workman in service and also recruited fresh hands without providing opportunity to the workman to serve. The Contractor issued a bogus transfer order on 10th of June, 1999 just to get an escape from the notice issued by ALC (C), Chandigarh. The enquiries revealed that neither there was any post available on which the workman was transferred nor there existed any rules to make such transfers. He has further claimed that there was no contractual bindings between the workman and the contractor and the workman had worked directly under the Management.

The Management in their reply has denied the relationship of employer and employee between the parties. According to them the management had engaged a Contractor to provide Security Guards to them for its installations and offices and the payment of wages was made directly to the contractor. Management is unable to say whether the workman had worked for them through the contractor during the relevant period since record of his service if at could be only with the contractor and not with them. They denied that the workman was ever engaged by them or terminated his services. They further denied

that the Management had maintained the seniority lists of worker as they did not appoint any directly as there was ban on direct recruitment. Denying all other averments made in the statement of claim it is stated by the Management that the workman has no claim to make against the Management as by his own saying he has admitted that he was engaged through a contractor. They have supported their claim with a copy of agreement, by which, as is claimed, the management had allotted the contract of supplying security guards to them by the contractor.

The perusal of the file shows that the workman has not produced any evidence in support of his claim nor even his affidavit whereas the management has placed on record the copy of agreement supporting their version. As stated above the workman also stopped appearing in the case through his representative and he never appeared in person. Thus there is no evidence on record to support the claim of the workman that he was engaged by the Management or his services were terminated by them. The workman has, therefore, utterly failed to show that he was recruited by the Management and his services were terminated by them or that he had served the Management for 240 days in twelve months preceding the date of Termination of his services by the Management and they, did not follow the provisions of Industrial Disputes Act, 1947 before terminating his services. In my opinion the workman is not entitled to any relief. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2719.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिटेन्डेन्ट आफ पोस्ट अफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1115/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-40012/240/1999-आईआर(डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2719.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1115/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sr. Supdt. of Post Offices and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-40012/240/1999-IR (DU)]
SURENDRA SINGH, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II
CHANDIGARH**

Presiding Officer : Shri Kuldip Singh

Case I. D. No. 1115/2005

Registered on : 22-09-2005

Date of Decision : 7-06-2007

Raj Kumar (Ex-EDPM)

VPO Sultana, district Panipat (Haryana) :: Petitioner

Versus

Senior Superintendent Post Offices,
Karnal Division, Karnal.

Respondent

APPEARANCE

For the Workman : Mr. R.P. Rana, Advocate

For the Management : Mr. K. K. Thakur, Advocate

AWARD

The Government of India vide their order No. L-40012/240/1999/IR(DU) dated 21st October, 1999 desired to know the following :—

“Whether the action of the Sr. Superintendent of Post Offices, Karnal Division, Karnal in imposing punishment of dismissal from service upon Sh. Raj Kumar, Ex-EDPM, w.e.f. 17th August, 1996 is just and legal ? If not, to what relief the workman is entitled ?”

The notice of the reference was given to the parties who appeared through their Counsel. The workman filed the Claim Statement, replication and his affidavit. The Management filed Written Statement and opposed the claim of the workman. They supported their submissions with the affidavit of Sh. Rameshwar Dass, Senior Superintendent of Post Offices besides with the photo copies of number of documents and the inquiry proceedings, held against the workman. They also submitted Written Arguments which are rebutted by the workman by his Written Arguments, duly supported by the judgements of different High Courts of the country and that of supreme Court of India.

I have gone through the file and have also considered the submissions made by the Counsel for the parties, both in writing and orally.

The claim of the workman is that he was appointed as Extra Departmental Branch Postmaster on 25th October, 1982 and he served the Management upto 17th August, 1996 when his services were disengaged. He was again disengaged on 19th February, 1997 since the Appellate Authority found the first disengagement illegal. The disengagement of the workman 2nd time was bad in last since a person, who was not in service or under suspension, could not be removed from service as he was not holding any post on the day; that the inquiry held against him was bad in law, as infact no inquiry was held. He was also not allowed to engage a defence representative or lawyer to defend himself on the inquiry. The inquiry officer obtained

his confession under the threat of action through the police. He acted as if the spokesman of his department and thus acted partially. Even otherwise domestic inquiry claimed to be held was infact no inquiry as no witness was examined nor any proceedings were recorded; that no loss was caused to the Management as a result of the conduct of the workman, therefore, also the punishment awarded to him was bad in law. In short the claim of the workman is that his removal from service, after the so called domestic inquiry was bad in law as no inquiry was held nor he was given opportunity to defend himself or take the help of defence representative or lawyer. Moreover, no monetary loss was caused to the Management as a result of the misconduct alleged. Therefore, the extreme penalty of removal from service awarded was bad in law, disproportionate, so the same cannot be sustained. He has prayed for setting aside his removal from service and grant of all service benefits, reinstatement in service and back wages etc.

The Management has opposed the claim of the workman. According to them the workman, in his capacity as EDBPM Sultana received Rs. 2000 for depositing in Saving Bank A/C No. 1372458. However made an entry of money in the pass book of the depositor but did not account for that amounts and when the depositor tried to withdraw the money, the workman persuaded him not to do and ultimately the depositor had to go to Panipat, Thermal Post Office, so as to withdraw his money. By that time the workman had deposited the monay, so received, on 31st October, 1995. The depositor made the complaint in writing. During the investigation it was found that the workman had committed other embezzlement also like of Rs. 280 in the MSY account No. 11172, as he did not account for that amount received on 14th January, 1995 and deposited that amount on 15th March, 1996. The workman therefore, was found having committed misconduct and so the departmental inquiry was initiated against him, in which the workman admitted his guilt but tried to justify his conduct, by making reference to his family problems. Since the confession was not unqualified, therefore, an oral inquiry was held in which the workman made statement in writing, on 27th June, 1996. Thereupon he was found to have done the misconduct. He was then imposed the punishment of removal from service vide order dated 12th August, 1997. Upon Appeal, the case was remanded back to the inquiry officer for reconsideration. The directions of the Appellate Authority was complied with and the copy of the inquiry report was given to the workman who was also given opportunity to make representation. The Appellate Authority considered the representation made by the workman and finding no merit in that, approved the order of dismissal of the workman from service. It is also the claim of the Management that since the workman had opted to approach the alternative remedy under the CAT Act, he was not entitled to take resort to remedy under the Industrial Dispute Act, 1947, CAT Act.

With regard to the averments made in the Claim Petition, it is stated by the Management that the grounds taken by the workman, to challenge the order of his dismissal, are baseless. The law is settled that where the

Appellate Authority issues direction to the Disciplinary Authority for reconsideration of the case the Delinquent Official is treated to be under suspension from the day of passing of the order by the Appellate Authority therefore, the contention of the workman that the order of his dismissal dated 19-2-1998 was bad in law is of no consequence. Supporting that the inquiry officer was justified in not conducting the inquiry further after the workman made the confession it is stated by them that the inquiry officer was justified in not proceeding further in the matter. They denied that the confession was obtained under threat. Claiming that the affidavits obtained by the workman, after the conclusion of the inquiry, were of no value, since the workman had himself admitted the charges during the course of inquiry. It is also claimed by them that the Management did not violate the provisions of EDA (Conduct and Service Rules, 1964).

The workman filed the replication in which he took the plea that he had every right to withdraw his petition from the CAT, as he had the option to seek relief under the I.D Act. Denying that the history of the case given by the Management is correct it is stated by the workman that there was no basis of the allegations levelled against; that no proper inquiry was held against the workman. There was also no justification for the finding of the inquiry officer which were arrived at on the basis of the preliminary inquiry. No procedure was followed while holding the inquiry. No procedure was followed while holding the inquiry so the inquiry conducted was not proper.

The workman supported his claim by his affidavit whereas the Management filed the affidavit of Shri Rameshwar Dass in support of their claim.

After going through the pleading of the parties, I find that there is no dispute that the workman has served the Management as Extra Départemental Branch Postmaster w.e.f 25th October, 1982 till 19th Feb., 1997, when his services were terminated for this misconduct. The Management has claimed that he order of the removal of the workman was done after holding an inquiry whereas the workman claims that no fair inquiry was held. It is on record that when in the appeal the workman raised the claim that he was not provided with the copy of the inquiry report the Appellate Authority remanded the case back to the inquiry officer to reconsider the facts and pass fresh orders after providing copy of inquiry report to the workman. The inquiry officer complied with the directions, provided the copy of the inquiry report to the workman. He considered the matter afresh, but found no cogent evidence on record to revise his earlier order and so the services of the workman were finally dispensed with on 19th February, 1997. From the pleadings of the workman it is shown that he had confessed his guilt in writing, thereby admitting that he had committed misappropriation of the money of the depositors as was alleged against him.

The Management has placed on record the photo copy of inquiry proceedings which contains Written Statement of the workman dated 27th June, 1996 and marked as M-3. In this letter, the workman admitted to have been

served with the charge sheet dated 4th April, 1996. He admitted that the charges 1 and 2 were correct. He further stated that he was not interested for further proceeding in the inquiry. The statement is shown to have been written by the workman in his own hand which was attested by the inquiry officer besides another person. The inquiry proceedings also contain another letter which is attested on 8th June, 1996. According to this letter the son of the workman was suffering from polio, so the workman was disturbed and was prone to mistakes. By that letter he admitted to have deposited the money misappropriated alongwith interest on 15th March, 1996. Thus we find that the workman admitted, to have committed the embezzlement alleged against him and to have deposited the amount embezzled. The Management has also placed on record the copy of articles of charge, the confessional statement of the workman, besides other papers. The workman has only claimed that the confessional statement made by him was not voluntarily and was procured under threat. He, however, could not say as to why the inquiry officer had given him threats. Neither in his pleadings nor in his affidavit, the workman has submitted facts to show that the inquiry officer had reasons to be partial in the proceedings e.g. he impressed upon the workman to admit his guilt. In the absence of any cogent evidence, it cannot be accepted that the confessional statement may by the workman was not voluntarily. It has been observed that generally after knowing the result of the inquiry proceedings the delinquent official retracts from the statements made by them. Once the delinquent official confesses his guilt, there remains nothing to be gone into inquiry. The law is well settled by Hon'ble Supreme Court of India that in a domestic inquiry when the delinquent official confesses his guilt, there will be nothing more for the Management to go into and in such a case holding an inquiry further would be mere an empty formality. In this regard reference can be made to the judgement of Hon'ble Supreme Court in the case of Central Bank of India Vs. Karunamoy Banerjee, reported as (1967) 2 LLJ 739. In the face of the law so laid down by Hon'ble Supreme Court, the authorities referred to and relied upon by the workman reported as 1993 (3) SCT 137 and 2002 (1) SCT pales way. Since the workman has failed to prove that his confession was not voluntarily by producing any evidence, therefore, it is taken that this allegation is an afterthought and prompted by the order of the Disciplinary Authority, by which the services of the workman were terminated. The record of the file shows that the workman was duly served with the articles of charges, the copy of the inquiry report was given to him and he was given good chance to defend himself. As stated earlier under his own hand, he declared that he was not interested to participate in the inquiry proceedings further. In view of that statement, the inquiry officer was justified not to have proceeded further in the matter. The relevancy of the documents procured by the workman, such as the affidavits of the complainant in his favour, was the act of the workman, after having been punished in the case. There is no merit in the claim of the workman and to my mind the punishment awarded was also justified as no financial institution would afford to

retain an official who plays with the trust of the customers, the backbone of the institution. In my opinion the workman did not deserve any leniency and the punishment awarded was well justified. The reference is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2720.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिस्टेन्डेन्ट ऑफ पोस्ट आफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1109/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-40012/66/93-आई.आर. (डी.यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2720.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1109/2005) of the Central Government Industrial Tribunal-Cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Supdt. of Post Offices and their workmen, which was received by the Central Government on 24-8-2007.

[No.L-40012/66/93-IR(DU)]

SURENDRA SINGH, Desk Officer
ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Presiding Officer : Shri Kuldip Singh

Case I. D. No. 1109/205

Registered on : 22-09-2005

Date of Decision : 6th June, 2007

Som Dutt Sharma S/o Sh. Banarsi Dass
R/o Village Amin, District Kurukshetra

: Petitioner

Versus

The Superintendent of Post Office,
Kurukshetra Division, Kurukshetra

: Respondent

APPEARANCE

For the Workman : Mr. Maharaj Kumar, Advocate
For the Management : Mr. H.C. Arora, Advocate

AWARD

The following reference has been received from Government of India vide their order No. L-40012/66/93-IR (DU) dated 2/5th August, 1994 :—

“Whether the termination of services of Sh. Som Dutt Sahrma, Ex-Driver under Supdt. of Post Offices, Kurukshetra Division, Kurukshetra is justified?

If not, what relief he is entitled to ?”

On receipt of referee, notice were issued to the parties, who appeared through representative and Counsel, respectively. The workman filed his Claim Statement, against which the Management filed the Written Statement. The workman filed rejoinder and his affidavit. He also placed on record documents marked as W-1 to W-3. The Management filed the affidavit of Sh. S.P. Arya, Superintendent of Post Offices. The workman appeared as a witness and replied to the questions put to him by the Management, in the cross examination. The Management examined Sh. S.P. Arya who was also cross examined by the representative of the workman.

Stated in brief, the claim of the workman is that he was employed as a driver by Respondent No. 1, on 4th May, 1990 and he served them upto 5th May, 1991. Thereafter the Management used to engage him for short periods i.e. from 2—12/13 days in a month. In that between they imported a driver from outside agency that he had served the Management for 240 days in a year preceding the date of his disengagement. Thus the Management was under an obligation to follow the provisions of Sections 25-F of the I.D. Act, 1947 in short Act before the termination of his services. However the Management did not comply with the provisions of the said Act and also violated the principles of natural justice. He was neither served with one month's notice nor was paid the wages for the notice period. He was also not given retrenchment compensation. They further violated the provisions of natural justice as they imported a driver from other unit. Thus denied the right to the workman to be adjusted against the post. He has prayed for declaring the termination of his services as bad in law and for payment of full back wages for the period he has remained without service.

The claim of the Management is that, the workman had served them from 26th June., 1990 upto 3rd December., 1990, with break of two days on 22nd and 23rd August, 1990. Thereafter the workman served in the leave arrangement of one Ashok Kumar driver from 4th January, 1991 to 8th Feb., 1992. Before that he was also engaged as watchman from 24th to 31st May, 1999. It is further claimed by them that the Management had two vehicles one was at Kurukshetra and the other at Ambala. The vehicle of the Management bearing No.HYX 8218, which was in the use of Senior Superintendent of Post Offices Ambala was burnt in the agitation against the Reservations in Haryana. As a result the driver of that vehicle was rendered without work. He was, therefore, directed to be available in the Divisional Office of the Management at Kurukshetra. Since he was a regular driver of the Management therefore his services were used by both Ambala and Kurukshetra Divisions. The workman however served the Management during the leave vacancy. They denied the right of the workman to serve the Management from 3rd December, 1990 stating

that the Management has a regularly appointed driver at their disposal. They further claimed that the workman was employed against the vacant post of a watchman in the grade of Rs. 750-940 from 24th to 31st May., 1990. He was then appointed as jeep driver in the scale of 950-1500 w.e.f. 1st June., 1990. According to them the workman never completed the service of 240 days in any calendar year and he had worked in the leave vacancy. His services got terminated automatically when the person in whose leave he had been engaged joined the service. In the circumstances he is not entitled to any relief.

The workman in his rejoinder did not add any striking facts and reiterated all that he had said earlier. He claimed that he had served the Management continuously for 246 days, 12 months preceding the date of termination of his services. He further denied that the Management required the services two vehicles. According to him the Management was in possession of only one vehicle, for which the workman was engaged. He has also claimed that since the Ambala Postal Division was a separate Unit and had no links with the Kurukshetra Division, where the workman had a right to continue in. He in the end has prayed for reinstatement in service with full back wages and other relief.

By his statement the workman has proved his affidavit Exhibit W-1 and the documents placed on record by him exhibit W-2 and W-3. He denied having worked from 25th May, 1990 to 31st May, 1990 on the post of watchman. He also relied upon documents, W-2 and W-3. He claimed that he had worked as a driver whereas he was given salary at the rate of Rs. 750. He got salary @ 950/- as driver. Sh. S.P. Arya who appeared as a witness of the Management proved his affidavit M-1 and stated that the Management did not have the post of driver from 24th May, to 31st July, 1990 and that the salary of the workman was drawn as watchman though he was shown as a driver. The post against which the workman was served was created at Kurukshetra on 26th June, 1990. He further stated that from 1st June to 5th June, 1990 the workman was paid from the contingency and that the post of the watchman was a sanctioned post. He showed his inability to say that the workman had made entries in the Log Book. There is no evidence to show that the workman had served the Management for 240 days before the date of termination of his services.

According to him, the workman had lost worked for the Management on 8th February, 1992. The Management has placed on record, the detail of the working days which show the period during which the workman had served the Management. So as to find out the working days of the workman his services are to be count 12 months preceding the date of termination of his services which he claims to have taken place on 8th February, 1992. Thus counting backward from 8th Feb., 1992 we find that the workman served the Management for 71 days in twelve months. The

workman has claimed that he had served the Management as driver from 24th May, 1990 to 5th May, 1991. The Management has denied this fact. They have stated that the workman was appointed on 26th June, 1990, and he served them upto 3rd December, 1990 with breaks on 22nd and 23rd August, 1990. The workman has not been able to controvert this claim of the Management by any evidence. He cross examined the witness of the Management but could not extract anything with them to support his claim. Even otherwise as per Management there was no post of driver available with them upto 25th June, 1990. Thus the engagement of workman as a driver from 1st June, 1990 to 25th June, 1990 did not arise. As per the statement of payment of wages to the workman, he was paid the wages as a watchman and not as a driver. The claim of the workman also gets denied as according to the Management the workman had served the Management as driver from 4th January, 1991, to 8th February, 1992, for 93 days but in the leave arrangement of Sh. Ashok Kumar, Driver. This was another spell of period during which the workman served the Management. The workman himself in para No. 2 admitted that he had served the Management from two to 12 days in a month till 8th February, 1992 since they had imported a driver from outside. The workman, therefore, himself admitted not to have regularly served the Management from 4th January, 1991 to 8th January, 1992. Even when we count the engagement of the workman, though his engagement was in different capacities, during the period from 1st June, 1990 to 5th May, 1991, the total no. of days he served the Management comes out to be 238 days. This period includes a tenure engagement which he gained and ended with the tenure of leave of the driver against whose post the workman worked from 4th January, 1991. Therefore, it cannot be said that the workman had served the Management continuously for 240 days 12 months preceding the date of termination of his services. According to him his services were terminated on 5th May, 1991. However the statement placed on record by the Management show that the workman had further worked from 1st June, 1991 to 8th February, 1992 but with breaks and as per Management on the days the regular driver was on leave. Against this the workman has not produced any evidence. Therefore, failed to show by any evidence much less by cogent evidence that he had served the Management for 240 days preceding the date of termination of his services on 8th Feb., or say on 9th February, 1992 as is claimed by the workman that he had served the Management upto 8th Feb., 1992.

The parties filed Written Arguments and the workman claimed therein, that he had served the Management from 24th May, 1990 to 5th May, 1991. In the same breadth he admitted that he had served the Management for 2—12/13 days each month, as the Management had engaged another driver. The workman has failed to rebut the claim of the Management that the

driver, who served the Management on the day the workman was not engaged on none else then a regular employee of the Management who was rendered jobless on the burning of the vehicle he used to drive in, an agitation. Therefore, the Management utilized his services at Kurukshetra. How could the workman claim to have been engaged to drive vehicle of the Management on a day, when they had already the assistance of a regular driver who was not imported, but was already in the service of the Management. It does not lie in the mouth of the workman to claim that the regular employee of the Management, posted at Ambala, had nothing to do with the working of the another division of the Management at Kurukshetra the workman has also failed to prove copy of the log book he brought on record, to show that he was the workman, who had driven the vehicle of the Management during the days shown therein. After going through the pleading of the parties their arguments I am convinced that the workman has failed to prove that he had served the Management continuously for 240 days preceding the date of his termination on 8th February, 1992. In fact the engagement of the workman was not regular rather he was engaged on different occasions in different capacities may be so as to utilize his service as a driver, but he was paid wages against different post. Even treating that engagement also as a continuous, yet if we count the working days the workman claims to have served the Management it is not proved that he had served the Management for 240 days.

The question of failure of the Management to follow the provisions of the Act thus becomes immaterial. In my opinion the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2721.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्मी स्कूल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1221/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-14012/3/2005-आई.आर.(डी.यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2721.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1221/2005) of the Central Government Industrial Tribunal-Cum-Labour Court No. II, Chandigarh as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of Army School and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-14012/3/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer : SHRI KULDIP SINGH

Case I. D. No. 1221/2005

Registered on : 29-11-2005

Date of Decision : 9-5-2007

Manoj Kumar S/o Shri Mohinder Pal Singh
C/o Bhartiya Mazdoor Sangh, Puri Road,
Arya Samaj, Patiala

: Petitioner

Versus

The Principal,
Army School 40, Baradari, Patiala : Respondent

APPEARANCE

For the Workman : Mr. M. R. Dhiman AR

For the Management : Mr. K. L. Behl, Advocate

AWARD

The workman is present alongwith representative. Respondent principal of Army School is present alongwith Counsel.

It is stated by the parties that they may have compromised in the matter and deal has been settled the workman has received Rs. Seventy Four Thousand vide cheque No. 095798 dated 30th April, 2007 drawn on U.T.I. Bank Ltd, Patiala. They have also produced the written undertaking of the workman duly supported by his representative.

The Government of India vide their order No.L-14012/3/2005-IR(DU) dated 26th October, 2005 desired of this Tribunal to decide whether the action of the management of Army School, Patiala, in terminating, the services of Manoj Kumar, Ex-Safai Karamchari w.e.f. 25-11-04, without complying with the provisions of Industrial Dispute, Act 1947, was legal and justified. If not, to what relief the concerned workman is entitled to and from which date. In view of the settlement arrived at between the parties no more claim of the workman is left against the Management. He has given in writing that he has forgone his every claim against the Management including the claim of re-instatement/re-employment. Therefore, the workman is entitled to no relief the award is passed against him. Let the copy of this award be sent to appropriate Govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2722.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण, चेन्नई के पंचाट (संदर्भ संख्या 152/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/476/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2722.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 152/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/476/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 152/2004

[Principal Labour Court CGID No.185/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Palanisamy : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I
Trichirappalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar
Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/476/98-IR (B-I) dated 12-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 185/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 152/2004.

2. The Schedule mentioned in that order is, as follows :

"Whether the demand of the workman Shri M. Palanisamy, wait list No. 305 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karur Main branch from 13-06-1978. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karur Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-06-1978 the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Siruthozhil branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 305 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 305, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 305 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible

to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald

statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device

to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression '*actually worked under the employer*' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that “*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*” Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that “*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*” It further held that “*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*” Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that “*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it, and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the*

establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also.” He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that “*settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*” Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is ‘whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?’ The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner’s contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that “*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in*

moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for

determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back

door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMADEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."

Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account

of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

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|--------------------|--|
| For the Petitioner | WW1 Sri M. Palanisamy WW2 Sri V. S. Ekambaram |
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| For the Respondent | MW1 Sri C. Mariappan MW2 Sri T. L. Selvaraj |
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Documents Marked:—

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |

| | | | | | |
|-----|----------|--|--|----------|---|
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W19 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W20 | Feb.2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W22 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W24 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W9 | 13-06-78 | Xerox copy of the service certificate issued by Karur Main Branch. | W25 | 07-02-06 | Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants. |
| W10 | 17-08-94 | Xerox copy of the service certificate issued by Karur Main Branch. | W26 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W11 | 30-04-97 | Xerox copy of the service certificate issued by Siruthozhil Branch. | For the Respondent/Management :— | | |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. | Ex. No. Date Description | | |
| W13 | Nil | Xerox copy of the Reference book on Staff matters Vol. III upto 31-12-95 | M1 | 17-11-87 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M4 | 9-01-91 | Xerox copy of the settlement. |
| W17 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2723.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 154/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/230/1998-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2723.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 154/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-8-2007.

[No. L-12012/230/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 154/2004

[Principal Labour Court CGID No.193/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Nagarajan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India, Region-I,
Trichirappalli

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar
Advocates

AWARD

1. The Central Government, Ministry of Labour, *vide* Order No. L-12012/230/98-IR (B-I) dated 12-03-1998 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 193/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 154/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri A. Nagarajan, wait list No. 523 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thirukkovilur branch from 1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thirukkovilur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From the year 1981 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Thirukkovilur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 523 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 523, he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 523 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wages in class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947.

Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's

case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "*the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc*" It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the*

settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.*" It further held that "*the Tribunal should look into*

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post

at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTH & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no

right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMADEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS

LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri A. Nagarajan

WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan

MW2 Sri T. L. Selvaraj

Documents Marked:—

| Ex. No. | Date | Description |
|---------|----------|---|
| WI | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| | | | | | |
|-----|----------|---|---|-----------|---|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies. | W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W21 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W8 | Nil | Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W24 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W9 | 08-08-88 | Xerox copy of the service certificate issued by Tirukkovilur Branch. | W25 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W10 | 1990-94 | Xerox copy of the service particulars of Petitioner. | For the Respondent/Management :— | | |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions. | Ex. No. | Date | Description |
| W12 | Nil | Xerox copy of Vol. III of Reference book on staff matters upto 31-12-95. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M2 | 16-7-88 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M4 | 9-01-91 | Xerox copy of the settlement. |
| W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | M6 | 9-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. | M7 | 28-5-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-5-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-7-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99. |

APPEARANCE

For the Workman : Mr. A.K. Batra,
AR

For the Management: Mr. N.K. Zakhmi,
Advocate

AWARD

The workman is continuously absent. Management appears through Counsel.

On the last date of hearing Mr. A.K. Batra, Advocate who was representing the workman stated that he has no instructions to appear in the matter. It is on record that he was allowed to appear for the workman on his claiming, having been engaged by the workman. Mr. Batra failed to furnish authority letter to represent the workman and, as stated earlier on 19th April, 1997, the claimed to have no instructions. It was in these circumstances fresh notice was issued to the workman under R/C, vide postal receipt No. A-208 dated 4th May, 2006, directing him to appear in the case. The workman is neither present nor the R/C carrying the notice has been received back unserved. The workman lives in the district Kurukshetra and the time, from the date of issuance of summon till today is sufficient to reach, for the R/C to each the workman and to the Tribunal, on its return journey, in case the workman was not available on the address given. Therefore, the Tribunal is satisfied that the notice was served upon the workman but he has chosen not to appear in the case. The record of the file also shows that the workman did not appear in the case personally on any date and that speaks of his seriousness to contest his claim. It is in these circumstances the reference is being answered in the absence.

The Government of India vide their order No. L-22012/320/98-IR (C-II) dated 4th June, 2003 has desired to know whether the action of FCI, Kurukshetra in terminating the services of Sh. Krishan Chand and others as named in the list, was legal and justified. If not, to what the said workers were entitled to. Among the workman only Om Parkash filed his Claim Statement by which he stated that he has worked for the Management in their Godown at O.C. Pipli, District Kurukshetra on a salary of Rs. 950/- w.e.f. 28th March, 1994 continuously and on 7th August, 1995 his services were terminated by the Management without any notice, charge sheet or inquiry. He was also not informed on the grounds on the termination of his services. The Management also did not follow the provisions of I.D. Act, 1947 and principles of natural justice. Thus they violated the provisions of Section 25-F, G and H of the Act specifically. They adopted unfair labour practice as the workman was a Trade Unionist. That the workman has remained without any job although this period. He has prayed for quashing the order of termination of his services and reinstating him with full back wages, continuity of service and arrears alongwith interest at the rate of 18% p.a.

The Management has opposed the claim of the workman stating that the workman was never engaged by them nor he had served them directly. He was engaged by

a contractor, Messrs. Ex-Servicemen Security Services, Kurukshetra with whom the Management had an agreement for providing persons for the watch and ward of the stocks of the Management, from time to time. The work of watch and ward was not a regular work and was only seasonal and the watch and ward staff was engaged on the need basis. The Management used to make payment of wages to the contractor, as per agreement and they did not issue any appointment letter to the workman nor they had terminated their services. The contractor engaged was an independent organization, duly registered, having valid license. In the engagement of the workman, by the contractor, the Management had no more to play for they ever enjoyed disciplinary control over them. The workman having failed to join necessary parties, the reference, is therefore, not maintainable. They also claimed that this Tribunal has no jurisdiction to entertain the reference or that the workman is entitled to any relief. Even otherwise, the reference is not maintainable since the workman has concealed true facts. In reply to the averments, para by para, the respondents have reiterated the facts stated in the preliminary objections. They have, however, added that since the contractor was regularly deducting the EPF from the wages of the workman and deposited the same with the concerned authority under account no. HR-739, therefore, the workman was an employee of the contractor for all intents and purposes. They have further denied that the Management had mala fide intentions to victimize the workman or that the work for which he was engaged, was permanent in nature. In the end they have claimed that the workman is not entitled to any relief.

In the rejoinder the workman repeated the facts stated in the Claim Statement and added that the agreement between the parties was only for 89 days and the license was issued only for one year. Thereafter, the workman, directly worked under the control of the Management therefore his termination was bad in law.

In support of their claim the workman filed his affidavit and through his counsel has made an application to place on record photo copy of the Log Book but he did not pursue that application. The Management filed the affidavit of Sh. C.P. Haran, District Manager, but neither the workman nor the witness of the Management appeared in the witness box and to prove their respective affidavits. They have also not produced any legal evidence and the parties did not have chance to test the evidence on the touch stone of cross examination. In this situation the loser is the workman, as, before claiming the relief as prayed, for he was required to prove that he had continuously served the Management for 240 days 12 months before the date of termination of his services. He has utterly failed to do that. Thus he has failed to prove that he was a workman, who had served the Management and the Management terminated his services without following the provisions of the Act or principles of natural justice. In my opinion the workman is not entitled to any relief and the award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का. आ. 2726.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 959/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-23012/25/1998-आई. आर. (सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 959/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-23012/25/1998-IR(C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldeep Singh, Presiding Officer

Case I.D. No. 959/2005
Registered on : 15-09-2005

Date of decision : 24-05-2007

Kalu Ram S/o Shri Gopal Ram
C/o Sh. R.K. Singh Parmar,
Secy. Pb. INTUC,
Quarter No. 35/G,
Nangal Township,
District Ropar

... Petitioner

Versus

Chief Engineer,
System Operation,
Bakra Beas Management Board,
Sector-19-B, Madhya Marg,
Chandigarh

... Respondent

APPEARANCE

For the Workman : Sh. R.K. Singh Parmar,
AR

For the Management: Sh. Ram Singh,
AR

AWARD

The parties are present through their representatives.

The representative of the workman Sh. R.K. Singh Parmar has stated that he has inspected the record provided by the Management and after examining the same he is satisfied that the workman has not served the Management from 1st April, 1993 to 31st July, 1993, therefore, his claim, as made out in this reference, is not supported by the record. He, therefore, desires to withdraw from the contest of this reference, but seeks permission to file fresh claim in case he gets hold of evidence, in his support. The statement of the representative of the workman has been recorded and placed on record. The Management has shown no objection to the prayer made by the representative of the workman. They have only stated that the workman should not be permitted to file fresh claim unless the same can be filed in accordance with law.

I have considered the prayer made by the representatives of the parties.

The Government of India vide their order No. L-23012/25/98/IR (CM-II) dated 22nd Feb., 1999 referred the question for the adjudication of this Tribunal and to say whether the action of the Chief Engineer (Operation System), BBMB, Chandigarh and Resident Engineer, Dehar Power House Division, Bhakra Beas Management Board (Power Wing), Sallapar, District Mandi (H.P.) in terminating the services of Sh. Kalu Ram S/o Sh. Gopala Ram w.e.f. 31st July, 1993 is just and legal. If not, to what relief the workman is entitled.

In response to the notice issued by the Tribunal, the parties appeared through their representative and filed their respective claims. The workman claimed that he had worked for the Management from 2nd June, 1997 to 30th March, 1994, as Beldar and he was then engaged as a daily wager from October, 1988 to 31st August, 1993. Today his representative has admitted that the workman did not serve the Management from 1st April, 1993 to 31st July, 1993. By his own statement made through his representative the workman has admitted to have served the Management only upto 31st March, 1993 and not upto 31st August, 1993. If we count the working days of the workman, even as per the claim made by him, he did not serve the Management for 240 days in 12 months preceding the date of his disengagement, which according to the statement of his representative took place on 31st July, 1993. Since the workman has admitted to have not served the Management for 240 days, 12 months preceding the date of termination of his services, therefore, he is not entitled to maintain that he was a workman on the day, his services were terminated, by the Management in violation of the provisions of the I. D. Act especially when the Management has claimed and admitted by the workman, that he had not served the Management for 240 days. Since the workman has failed to prove the basic requirement of his being a workman, therefore, he is not entitled to any relief. The reference made is answered against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का. आ. 2727.—ऑड्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑड्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 347/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-22012/178/एफ/1993-आई. आर. (सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 347/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-22012/178/F/1993-IR(C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

**Case I.D. No. 347/2005
Registered on : 16-08-2007**

Date of decision : 6-07-2007

Rajinder Pal S/o Shri Fateh Chand,
1731, Phase-VII, Mohali
District Ropar ... Petitioner

Versus

The Senior Regional Manager,
FCI, Sector-34,
Chandigarh ... Respondent

APPEARANCE

For the Workman : Sh. H.S. Hundal,
Advocate

For the Management : Sh. N.K. Zakhmi,
Advocate

AWARD

The Government of India vide their Order No. L-22012/178/F/93-IR (C.II) dated 2nd Sept., 1993, the Ministry of Labour referred the following dispute for the adjudication of this Tribunal :—

“Whether the termination of services of Shri Rajinder Pal S/o Shri Fateh Chand is justified? If not, to what relief is he entitled to and from what date?”

The notice of the reference was given to the parties who appeared through their Counsel. The workman stated his claim by filing Claim Petition dated 27th January, 1994 which was opposed by the Management by their Written Statement filed on 12th May, 1994. In support of his claim the workman filed his affidavit and also placed on record photocopies of the documents. The Management filed affidavit of Shri J.N. Negi, District Manager supporting their claim. They also filed the photocopies of the documents. The then filed the affidavits of other District Managers, G. Jiwan Kumar, Jagdish Singh and H.S. Bedi, but finally examined only H.S. Bedi, as their witness and left all other. They however, examined another witness Gurvinder Singh, AG.II in support of the their claim.

The claim of the workman is that he was engaged by the Management on 29th Dec., 1986 as a casual worker on daily wages and was put to various kinds of duties such as watch and ward, messenger and peon. He served the Management till 13th July, 1988 when his services were terminated although the same were satisfactory and there was no complaint against him. The Management also did not call for his explanation on any occasion. The Management further discriminated him by paying him wages on daily basis although similarly placed persons were given regular grade of 750-940 w.e.f. 1st January, 1986. His claim for regularization annoyed the Management and they terminated his services although he was working against a regular post. Besides, they had 45 posts of watchmen, 16 of messengers and one of typist available with them. The termination of his services was illegal, arbitrary and in violation of the I.D. Act, 1947, hereinafter to be referred as Act. The Management did not pay him the retrenchment compensation or notice or notice pay before the termination of his services. They engaged fresh workers without providing him opportunity to work. They retained the juniors of the workman and thereby violated the provisions of Sections 25-G, H and N. The conduct of the Management was also unfair as they engaged the contractor to do the job which he was doing instead getting the same done by him. Thus adopted unfair labour practice. He further stated that he had raised the demand notice which was withdrawn later on. He also filed a writ petition in the High Court which was withdrawn the writ petition with permission and thereafter he had raised fresh demand notice.

The claim of the Management is that they had engaged the workman on casual basis so as to work as a messenger but denied that he was engaged to do all sort of jobs of Class-IV employees. Admitting that the services of the workman were retrenched on 13th July, 1988 they claimed that the same was done by following the provisions of Section 25F of the Act as the corporation did not require the services of the workman any more. Claiming that since the workman was engaged as a Casual worker, therefore, there was no question of calling for his explanation nor he could be given pay scale of a regular employee. The Management Corporation has a proper recruitment procedure under rules for the purpose of filling the vacancies and no person could be regularized in service just on his making the application. The availability of jobs with the Management depended upon the availability of

work. So as to overcome the losses, the FCI suffered, no post was filled up and so nobody could be recruited. It is further submitted by the Management that at the time of disengaging the workman, he was offered retrenchment compensation and wages for the notice period in the amount of Rs. 1350, in the shape of Cheque No. 061837 dated 13th July, 1988, but the workman refused to accept the same. The Management then sent that cheque to the workman under R/C and the same was returned with the endorsement of the postal authorities "left without address returned to sender." The Management thus did all that all was possible so as to pay the compensation to the workman but failed. They denied that the Management indulged in unfair labour practice and had engaged people through a contractor as per the Contract Labour (Revolution and Evolution) Act, 1970. According to them the nature of job performed by the workman was altogether different than the one offered to the newly engaged workmen. Thus the Management did not violate the provisions of the law. Even otherwise, as is held by Hon'ble Supreme Court in the case reported as AIR, 1985 Supreme Court, 448, every depot, godown and office of the corporation was different establishment, therefore, the workman could not compare himself with the workers working in that Regional Office of the Management in Punjab. They have alleged that the workman has harassed the Management by raising the demand then withdrawing it, then going to the High Court, then again withdrawing the petition and he has done that with mala fide intentions therefore, also the reference is bad.

The question which has fallen for the consideration of this Tribunal is whether the termination of services of Shri Rajender Pal, by the Management, was justified or not. From the pleadings of the parties it is shown that they are at variance about facts very little. There is no dispute between them that the workman had served the Management and his services were terminated on 13th July, 1988. The Management also did not dispute that the workman by that day had served the Management for more than 1 year. As per their claim, they had given wages for one month in lieu of the notice period and the retrenchment compensation to the workman on the day his services were terminated. It shows that the workman had served the Management for more than 240 days on the day his services were terminated. The facts which are disputed by the Management are that the workman was not entitled to a regular grade of Rs. 750-940 w.e.f. 7th January, 1996. Their claim is that the workman was a casual worker engaged on need basis and was not a regular employee nor he was engaged against a regular post, therefore, he could not claim a regular grade. The question of giving regular grade to the workman is beyond the scope of the reference, therefore, it cannot be considered.

The dispute which requires consideration is whether the Management, on the day of terminating the services of the workman, the Management had not given him retrenchment compensation as well as the wages for the notice period. The workman has claimed that the same were not paid to him. The claim of the Management is that they had offered the retrenchment compensation and the wages for the notice period, in the amount of Rs. 1350, in

the shape of cheque No. 061837 dated 13th July, 1988 but the workman had refused to accept the same. The Management then tendered that amount to the workman by a Regd. Letter. However the Regd. Letter carrying the cheque could not be served upon the workman and it was reported by the Postal Authorities that "the addressee left without the address." The letter was sent to the workman on the address House No. 2165, Sector-35C, Chandigarh. They have also placed on record photo copy of the sanctioned order exhibit A-4 and exhibit A-5 which reads that retrenchment compensation and one months notice pay in lieu of notice was sanctioned in favour of 9 casual workers including Rajinder Pal and the amount was paid to him vide cheque No. 061837 dated 13th July, 1988, in the amount of Rs. 1350. The workman has failed to rebut this claim of the Management by any evidence except his own statement that the amount of compensation was not paid to him by the Management. The Management has also supported their claim with the order passed in a similar case by CGIT-cum-Labour Court, Chandigarh, in I.D. No. 106 of 1989. They have claimed that like in the case of Bimla Devi, the workman in that case, they had offered the payment of compensation to the workman but he refused. The Management has however, not produced the witness who had offered the cheque and the notice pay, to the workman nor they have placed on record the letter with which the cheque was enclosed to show in whose presence it was offered and refused. But the evidence so produced show that the Management had prepared the cheque in favour of the workman which represented the notice pay and the retrenchment compensation. The report of postal authorities shows that the R/C was sent to the workman but was returned. The workman has not shown that the amount so offered was less than the amount due to him as notice pay and the retrenchment compensation. He has only claimed the violation of Section 25-N of the Act without producing evidence in terms of section 25K of the Act proving that during the period the workman worked for the Management on average had engaged not less than one hundred workers in preceding 12 months. The admission of witness of the Management that the Management had engaged one hundred workmen is not sufficient. The engagement of 100 workmen should be on average in 12 preceding months. No claim of less payment wages has been made out.

It is generally believed that once the retrenchment compensation is accepted, the workman loses the job permanently and for their reason generally the compensation offered is refused. The official acts done in a normal course are presumed to be correct unless proved otherwise. If a cheque for an amount representing the notice wages and retrenchment compensation was prepared it is presumed to have been given to the workman and if it did not reach to him, it was because he had left without proper address and was not available on the address which was available with the Management. The Management did all that which was possible and in their control. It cannot be said that they did not give the compensation to the workman on the day his services were terminated purposely. So far the question, whether the Management had violated

the provisions of the law in terminating the services of the workman is concerned, I am of the opinion that all that what was possible and expected of them under the I.D. Act was done by the Management. They offered the payment of wages for the notice period and the retrenchment compensation to the workman, before the termination of his services in July, 1988. Thus it cannot be said that the termination of the workman was bad in law because of violation of provision of Section 25F of the Act.

The fact, however, remains that the Management did not act appropriately after dispensing with the services of the workman. If the cheque representing the amount of compensation, offered to him, was refused by the workman, they should have made endorsement thereof on the letter in presence of the witnesses. They further failed in their duty to offer the amount of compensation to the workman on the day they appeared in response to the demand notice, before the conciliation officer to prove their bona fide, of having offered the amount of compensation to the workman. They did not do that even when notice from this Tribunal, asking them to answer the claim of the workman, was given to them. I have accepted their plea that they had offered the amount of compensation to the workman, on the day the services of the workman were disengaged, but I feel they owed duty towards the workman to have offered the same before the conciliation officer, before the Tribunal or should have again sent the cheque to him, after they had known about his changed residential address, as was given in the Claim Statement. Since the workman has failed to prove that his termination was not bad in law, he is not entitled to the relief of quashment, of his order of disengagement but he is definitely entitled to the amount of compensation he was due on the day his services were dispensed with.

In view of the discussion made above I decide the reference against the workman holding that the Management was justified in disengaging him from service as they did not require the same any more. He was entitled, on the day his services were disengaged to the amount of compensation. If he refused to accept the same he was still entitled to that at least after the day they appeared before the conciliation officer and this Tribunal. Therefore, I hold that the workman is entitled to the amount of compensation plus interest thereon at the rate of 9% p.a. from the date the Management appeared in this Tribunal in response to the notice i.e. 27th January, 1994 termination. The award is passed in these terms. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 24 अगस्त, 2007

का. आ. 2728.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 456/2005) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 24-8-2007 को प्राप्त हुआ था।

[सं. एल-22012/320/1998-आई. आर. (सी-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 24th August, 2007

S.O. 2728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 456/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 24-8-2007.

[No. L-22012/320/1998-IR(C-II)]
AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

Case I.D. No. 456/2005
Registered on : 24-08-2005

Date of Decision : 24-05-2007

Ranbir Singh S/o Shri Mansa Ram,
VPO Thanasar,
District Yamunagar ... Petitioner

Versus

District Manager,
Food Corporation of India,
494, Shashan Marg,
Karnal ... Respondent

APPEARANCE

For the Workman : Mr. A.K. Batra, AR
For the Management : Mr. N.K. Zakhmi,
Advocate

AWARD

The workman is continuously absent. Management appears through Counsel.

On the last date of hearing, Mr. A. K. Batra, Advocate who represents the workman stated that he has no instructions to appear in the matter. It is on record that he was allowed to appear, for the workman, on his claiming, having been engaged by the workman. Mr. Batra has failed to furnish authority letter to represent the workman and, as stated earlier, on 19th April, 1997 he claimed to have no instructions. It was in these circumstances fresh notice was issued to the workman under R/C, vide postal receipt no.A-209 dated 4th May, 2006, directing him to appear in the case. the workman is not present. The notice sent to him has been received back unserved with the

endorsement of the Postal Authorities "(UNCLAIMED)." From the report of the postal authorities the Tribunal is satisfied that the workman is not interested to prosecute his case. The record of the file also shows that the workman did not appear in the case personally on any date; and that also shows his seriousness to contest his claim. It is in these circumstances the reference is being answered in his absence.

The Government of India vide their order no. L-22012/320/98-IR(C-II) dated 4th June, 2003 desired to know whether the action of the Management of Food Corporation of India, Kurukshetra in terminating the services of Sh. Krishan Chand, Ranbir Singh and others was legal and justified? If not, to what relief they are entitled to. Among the workman only Ranbir Singh filed his Claim Statement, by which he stated that he had worked for the Management in their Godown at Jagadari, District Yamunanagar, on salary Rs. 930, w.e.f. 1st May, 1995, continuously and on 20th September, 1996 his services were terminated by the Management without any notice, charge sheet or inquiry. He was also not informed of the grounds of termination of his services. The Management also did not follow the provisions of I.D. Act, 1947, hereinafter to be referred as "Act" and principles of natural justice. Thus they violated the provisions of Sections 25-F, G and H of the Act specifically. They adopted unfair labour practice as the workman was Trade Unionist. That the workman has remained without any job although this period. He has prayed for quashing the order of termination of services and reinstating him with full back wages, continuity of service and arrears alongwith interest at the rate of 18% p.a.

The Management has opposed the claim of the workman stating that the workman was never engaged by them nor he had ever served them directly. He was engaged by a contractor, Messrs. Ex-Servicemen Security Services, Kurukshetra, with whom the Management had an agreement for providing persons for the watch and ward of the stocks of the Management, from time to time. The work of watch and ward was not a regular work and was only seasonal and the staff for watch and ward of stock was engaged on need basis. The Management used to make payment of wages to the contractor as per agreement and they did not issue any appointment order to the workman. Nor they had terminated his services. The contractor engaged was an independent organisation, duly registered and having a valid licence. In the engagement of the workman, by the contractor, the Management has role to play. The workman having failed to join necessary party, his reference is therefore not maintainable. They have also claimed that this Tribunal has no jurisdiction to entertain the reference nor the workman is entitled to any relief. Even otherwise the reference is not maintainable since the workman has concealed true facts. In reply to the averments, para by para, the respondents have reiterated the facts stated in the preliminary objections. They have, however, added that since the contractor was regularly deducting the EPF from the wages of the workman and deposited the same with the concerned authority, under A/C No. HR-7239, therefore, the workman was an employee of the contractor. They have further denied that the Management had mala fide

intentions to victimize the workman or that the work for which he was engaged was permanent in nature. In the end they have prayed that the workman is not entitled to any relief.

In the rejoinder the workman has repeated the facts stated in the Claim Statement and added that agreement with contractor was only for 89 days and the licence was issued in his favour only for one year. Thereafter the workman directly worked under the control of the Management, therefore, his termination was bad in law.

In support of their claim the workman filed his affidavit and through his counsel made an application to place on record photocopy of the Log Book, but he did not pursue that application. The Management filed the affidavit of Sh Girish Kumar, Area Manager, but neither the workman nor the witness of the Management appeared to prove their respective affidavits. They have also not produced any legal evidence as the parties did not have chance to test that evidence on the touch stone of the cross-examination. In this situation the loser is the workman, as, before claiming relief, as prayed for, he was required to prove that he had continuously served the Management for 240 days continuously, 12 months preceding the date of termination of his services. He has utterly failed to prove that. Thus he has failed to prove that he was a workman who served the Management and the Management terminated his services without following the provisions of the Act or principles of natural justice. In my opinion the workman is not entitled to any relief and the award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2729.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/त्रिम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 885/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/6/2001-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th August, 2007

S.O. 2729.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 885/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 23-8-2007.

[No. L-12012/6/2001-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH****Shri Kuldip Singh, Presiding Officer****CASE I.D. No. 885/2005****Registered on : 12-9-2005****Date of Decision : 7-6-2007**

Sushil Kumar S/o Shri Sube Singh, House No. 1, Vikram Colony, Rajpura Town, Patiala ... Petitioner

Versus

Indian Overseas Bank, The Assistant General Manager, 10B, P.O. Box No. 3765, 763 Anna Salai, Chennai ... Respondent

APPEARANCE

For the Workman : Mr. Raj Kaushik, Advocate

For the Management : Mr. Ramesh Chopra, AR

AWARD

The following reference was received from Government of India, Ministry of Labour under their No. L-12012/6/2001-IR (B-II) dated 27th April, 2001 :—

"Whether the action of the Assistant General Manager, Indian Overseas Bank in awarding the punishment of discharge from service to Sh. Sushil Kumar w.e.f. 1st July, 1999 is just and legal ? If not, what relief the concerned workman is entitled to and from which date ?"

The notice of the reference was taken by the parties who appeared through Counsel. The workman filed his Claim Statement and the Management their Written Statement. They also placed on record photocopy of the inquiry proceedings. Since the discharge of the workman was done after a domestic inquiry and the workman in his Claim Statement alleged that the inquiry held against him was not fair and proper, therefore, it was directed that arguments on fairness of inquiry be addressed first. The parties have submitted the Written Arguments which I have considered and have also gone through the file.

Stated in brief, the claim of the workman is that he was employed as a messenger by the Management Bank in the year 1994 and while working in the Bank he introduced one Asha Rani R/o Anand Colony, Rajpura, so as to open her account in the Bank at Rajpura. The said Asha Rani made transactions through her account and at times he received money from the Bank on her behalf that on 30th Dec., 1997 said Asha Rani submitted a withdrawal form to the Bank and the workman posted the withdrawal while leaving blank line for posting of the credit voucher. The passing officer without checking the ledger passed the withdrawal. However, in the evening it was found that the credit entry has not been done in the records, therefore, he approached the depositor to tender an amount of Rs. 31,500,

which the workman deposited in the account. All those transactions were done with the full knowledge of the Bank Manager. That the Management framed the petitioner although there was no complaint filed by Asha Rani and he was placed under suspension w.e.f. 24th March, 1998. The Disciplinary Authority without appreciating the explanation given by the workman initiated the inquiry proceedings; that the inquiry officer did not conduct the inquiry fairly. On the first date of the inquiry he provided with a list of documents. He was also allowed to inspect the documents alongwith his defence representative. On the next date fixed for which the inquiry was fixed two witnesses of Management Ashok Trivedi and Sh. M. L. Alexander were examined. The workman then was asked to produce his evidence, without providing him the opportunity to get prepared for the same. The workman, in the circumstances, examined Smt. Asha Rani, the depositor on that date. The inquiry officer, therefore, did not give sufficient time to the workman to prepare his defence. That the Management got a letter prepared from the Rattan Chand when the daughter of the workman was sick. The workman was called to the police station where he was made to sign the letter under threat that so long he did not sign that letter he will not be allowed to leave. The said letter was used against the workman during the inquiry. Thus the inquiry was conducted in violation of principles of natural justice. The discharge of the workman based upon such an inquiry is bad in law, so is required to be quashed. His prayer is that he may be reinstated in service with all consequential benefits.

The claim of the Management is that the workman was punished in terms of para 17.6 sub-para B of bipartite settlement since he had withdrawn Rs. 31,500 fraudulently from Savings Bank Account No. 10158 opened in the name of Asha Rani. On 30th Dec., 1997 when Asha Rani came to withdraw an amount of Rs. 39,000 from her account, the workman, so as to cover up his fraudulent act volunteered to fill up the withdrawal form and got the same passed from the scroll officer, obtained the payment from the cashier on her behalf, but later on removed the withdrawal slip from the payment vouchers of the day he thus caused damage to the property of the Bank and thereby committed misconduct as defined by para 17.5 (B) of the bipartite settlement of 1966. The workman had forged the thumb impressions of the account holder and withdrew an amount of Rs. 31,500. Denying the claim of the workman that he had not committed any misconduct, it is stated by the Management that the workman in his own words admitted to have left blank a line in the ledger. Thus he had mala fide intentions. The Management further denied that the explanation of the workman was not considered by the Disciplinary Authority rather the Disciplinary Authority had found sufficient material to hold an inquiry against the workman.

With regard to the holding of the inquiry it is claimed by the Management that the statement of the witnesses of the parties were taken down on 9th Dec., 1998. Denying the claim of the workman that he was not given sufficient time to prepare his defence it is stated by them that he never asked for time to produce the witnesses rather his

defence representative cross-examined the witness of the Management and also produced Smt. Asha Rani, as witness. Thereafter, the workman closed their evidence at his own will. According to them the workman prevailed upon Smt. Asha Rani, who had earlier made complaint against him, therefore, she appeared as his witness. Claiming that there was no bar to record the evidence of the defence on the day of the Management closed his evidence. It is stated by the Management that they had followed the principles of natural justice while holding the inquiry. They have provided the list of witnesses and documents besides the investigation report to the workman. The inquiry was adjourned on the request of the workman on 27th August, 1998 and on 8th Sep., 1998. On 9th Dec., the workman was given full opportunity to produce his witnesses. The workman was also given opportunity to submit his brief. After the conclusion of the inquiry, the workman was given another notice of the hearing fixed next. The Appellate Authority also provided personal hearing to the workman and thereafter passed the order. The Management therefore provided fair and reasonable opportunity to the workman and did not violate the principles of the natural justice. Denying that the workman was asked to sign the letter under pressure it is stated by the Management that there was no compulsion on the workman to sign the letter rather he had voluntarily confessed his misconduct. Since the workman had committed fraudulent dealing and also removed the withdrawal form, he suppressed the fraud committed by him. Relying upon the judgement of the Hon'ble Supreme court, in the case reported as 1996 11 LLN it is submitted by the Management that, a fair and proper inquiry was held and that the workman was rightly discharged from service although the misconduct, alleged against him was serious. In the end the Management has prayed that in case it is found that an inquiry conducted was not fair and proper, the Management be allowed to produce evidence to support the action taken by them against him. In nutshell, the workman was discharged from service for having committed fraudulent act by which he caused financial loss to the Management.

I have perused the inquiry proceedings, photo copy of which is placed on record. In order to find out whether a fair and proper inquiry was held, it has to be kept in mind that in a domestic inquiry the Tribunal does not sit in appeal over the order of the Disciplinary Authority and the Appellate Authority. A Tribunal can only see if whether the provisions of the law and principles of natural justice were followed while holding the inquiry or not. The rules of natural justice require that the workman proceeded against, is informed of the charges levelled against him. The witnesses of the Management are examined in his presence and he is given full opportunity to cross examine them. Then he is allowed fair opportunity to examine his witnesses including himself and the inquiry officer records his reasoning after examining the records. It is also required that the workman is given full assistance to examine any other record which he likes to examine and produce any evidence, to support his explanation. The workman, in this

case has given answer to all the requirement himself. He admitted that he had introduced Smt. Asha Rani who helped her to open an account in the Management Bank. He admitted to have received the chargesheet and cross-examined the witnesses of the Management alongwith his representative. The perusal of the inquiry proceeding also show that all along the defence representative remained present in the proceedings besides the workman. He received charge sheet, cross-examined the witness of the Management through the defence representative.

The examination of the inquiry proceedings show that the Management produced Sh. A. K. Dwivedi and Sh. M. Alexander as their witnesses who were cross-examined by the workman through his representatives. The inquiry officer provided full opportunity to the workman to cross-examine those witnesses. At the close of the statements of the witnesses the statements were explained to the workman, who signed form the statements acknowledging to have understood the meaning of the statement made by the witnesses. There is on record a notice dated 19th Dec., 1998 of the inquiry officer to the defence representative asking him to file his defence brief. There is nothing on record to show that the workman had asked for more time to prepare for defence or that he was handicapped to put up his defence. There is absolutely no evidence to support the claim of the workman that he was not ready to produce his defence. The fact is that the workman on no occasion claimed that he may be provided further opportunity or time to produce evidence in his defence. Thus it can be said that the inquiry officer followed the provisions of the law and principles of natural justice while holding the domestic inquiry against him. The charges against the workman were very serious as he had withdrawn more than Rs. 30,000 from the account of a lady. The fact that the workman himself deposited the money under his own signatures with the Bank, further goes to show that it was he who had misappropriated the funds of the Management. In the circumstances I feel the punishment of discharge award to him is lenient as the financial institution cannot afford to retain fraudulent people like the workman.

Considering all the facts and circumstances of the case I am of the opinion that the action of the Assistant General Manager was well justified in discharging the workman from service as he was evolved in a fraud case. Therefore, he is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2730.—ऑटोग्राफ विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिडिकेट बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑटोग्राफ विवाद में केन्द्रीय सरकार औटोग्राफ अधिकरण/

त्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ संखा 897/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/367/96-आई आर (बी-II)]
राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th August, 2007

S.O. 2730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Reference No. 897/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen which was received by the Central Government on 23-8-2007.

[No. L-12012/367/96-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Shri Kuldip Singh, Presiding Officer

CASE I.D. NO. 897/2005

Registered on : 13-9-2005

Date of Decision : 14-5-2007

Pawan Kumar S/o Shri Faqir Chand Goyal R/o.
House No. 380, Sector-14, Urban Estate, Karnal
... Petitioner

Versus

Assistant General Manager, Syndicate Bank, Sarojini
House, 6, Bhagwan Dass Road, New Delhi
... Respondent

APPEARANCE

For the Workman : Mr. B. B. Sharma, Advocate

For the Management : Mr. A. K. Jaiswal, Advocate

AWARD

The following reference was received from Government of India, Ministry of Labour vide their Order No. L-12012/367/96-IR (B-II) dated 29th August, 1997 :—

“Whether the action of the Management of Syndicate Bank in treating Sh. Pawan Kumar Goel, Clerk at Karnal Branch as voluntary cessation of his employment vide their order dated 26th Nov., 1993 is legal and justified ? If not, to what relief the said workman is entitled ?”

The notice of the reference was given to the parties, in response to which the workman filed his Claim Statement. He supported his claim with documents P-1 and P-2. The Management filed reply. Thereafter the workman filed the

replication and his affidavit supported by documents CW-1 to CW-19. The Management filed affidavit of Shri T. R. Rajagopal their Deputy Chief Manager, supported by photocopies of the documents M-1 to M-13 besides two envelopes, marked as A and B. The workman came in the witness box whereas the Management produced Shri T. R. Rajagopal as their witness.

The claim of the workman is that he was appointed as a Clerk and he joined his duties on 22nd Sept., 1978, in the Babul Branch of Karnal District; that he fell ill and the doctors advised him rest. He applied for grant of leave duly supported by medical certificate which was sanctioned from 25th November, 1989 to 23rd May, 1993. As he could not recover from illness, so he applied for extension of leave from 23rd April, 1992 to 23rd May, 1993. The Management directed the workman to submit the detail of his treatment and support the same with documents such as X-ray report, doctor's prescriptions which the workman supplied, but thereafter he heard nothing from the Management. He presumed that the leave applied for has been sanctioned in his favour. He applied for extension of leave upto 10th August, 1994 from his family house at Kaithal, as he had shifted there. On 1st August, 1994 he received a Regd. Letter, by which he was directed to report at the Kamal Branch of the Management for the settlement of his employees PF. It was there only he came to know that his services have been terminated w.e.f. 26th Nov., 1993. Though that order was not served upon him but on his request, a copy of order was given by the Branch Manager. It is the claim of the workman that the action of the Management was illegal, unconstitutional and against the principles of natural justice as the Management had dispensed with his services without following the provisions of Section -25-F of the I.D Act, 1947, for brevity Act. He was not given any retrenchment compensation nor a notice or pay in lieu of notice period. The Management further made the mistake and did not provide reasonable opportunity to the workman to explain his position before the major punishment of dismissal from the service was awarded. They did not serve any charge upon him nor held any inquiry, therefore, the order passed against him was bad in law. They could also not invoke the para XVII of 5th Bipartite Settlement dated 10th April, 1989 as the workman had applied for leave on medical grounds and the competent authority has sanctioned the leave in his favour. Since he could not recover from the illness so he applied for extension of leave. There was, therefore, no reason to presume that the workman had absented from duties. The punishment awarded therefore, was a clear violation of provisions of the Act and principles of natural justice. Moreover the Management did not reject his application as he was not conveyed the refusal to. Even otherwise the period of his absence could be treated as extraordinary leave. In the end he prayed that the order of termination of his services be set aside and the workman be reinstated in service right from 26th November, 1993. He may also be given benefit of continuity in service and back wages.

The claim of the workman has been opposed by the Management. They have taken preliminary objections to the maintainability of the reference and have also replied

the averments, made in the claim Petition, para by para. It is stated by them that the reference is bad since neither the petitioner is a workman nor there existed any dispute between the parties. In order to maintain the reference the petitioner was to fall in the definition of the "workman" as defined in Section 2-(S) of the Act and was also to prove there existed dispute between the petitioner and the Management. The workman having been dismissed from service on the day the reference was made he did not fall in the definition of the workman, and so, he could not maintain the reference. For this reason also the reference should be dismissed. On merits it is their claim that contents of para no. 2 are correct, that the workman was served with the letters as detailed in para no. 3 of the Written Statement, but he did not report for duty even thereafter. Therefore, the Management treated that the workman having voluntarily retired from service w.e.f. 14th Nov., 1993. They admitted that the two letters were received back undelivered, although he same were sent on the last known address of the workman. It is further submitted by them that the workman failed to substantiate his illness, therefore, he was treated absented from duty. The workman submitted certain medical certificate, but the Management did not treat them sufficient to support the claim for grant of leave. He alleged that the workman did not inform them about the change in his address, therefore, many of the letters were returned back undelivered. They further admitted that the letter declaring him having retired voluntarily, was received back unserved although it was sent to him on the last known address and the presumption was that the letter has been served upon the workman.

The Management has further claimed that claim made by the workman is incorrect. Infact the services of the workman got terminated automatically as in para no. 9 failed to fulfill the conditions of his services. They denied that the services of the workman were terminated by the Management as a punishment or as a result of disciplinary action, rather the termination resulted on the failure of the workman to comply with the conditions of his services. Since the workman remained absent for more than ninety days during May 25, 1993, therefore, he was given notice proposing his voluntary retirement from service. The workman did not give any leave application nor informed the respondent about his ill health. The Management has further claimed that a notice to the workman dated 14th October, 1993 was sent under R/C, but the same was received back undelivered. The letter by which the workman was treated to have retired voluntarily on 14th Nov., 1993 was also received back unserved. They denied that the workman had applied for leave. Admitting that the conciliation proceedings had failed, it is stated by them that the allegation that the Management had made false allegation against the workman is wrong. They also denied that the workman has performed satisfactory duty after his confirmation. It is their claim that the workman used to indulge in the acts of insubordination and misconduct. He was not regular in attending the office since 1998 for which he was issued several memos and letters for unauthorized absence. For those acts his increment were postponed. After remaining absent from duty from 15th Nov., 1992 to

19th March, 1993 he joined his services on 20th April, 1993 and again applied for leave on 23rd April, 1993 and upto 23rd May, 1993 although the medical certificates certified that the workman is fit to resume his duties. The Management could not bear misconduct and absence of duty as it threatened their working. They lost faith in his integrity and honesty. The Management has prayed for that the reference made be rejected as the workman is not entitled to any relief.

The workman filed the replication and repeated the facts stated in the Claim Statement. He admitted to have received letter dated 6th and 18th January, 1982, 3rd April, 1984 and 20th October, 1990 and claimed that those letters were issued just to harass the workman. Admitting that he has remained absent from duty from 15th Nov., 1992 to 19th March, 1992 he stated that he was ill, therefore, he could not joined his duties and requested for extension of leave on medical grounds. He denied to have received letter dated 14th October, 1993 and 16th October, 1993 and stated that the decision of the Management was unilateral as the workman had never requested for voluntary retirement. He reiterated that the services of the workman were terminated as a matter of punishment and he was not given notice before the awarding of the punishment even otherwise the punishment was arbitrary and against the principles of natural justice as no opportunity was given to him to defend him nor any inquiry was held. Therefore, the punishment awarded was bad in law.

The workman appeared as a witness and proved his affidavit W-1 besides the documents W-2 to W-20 he claimed that he had not received the letters exhibit M-1 to M-10, but admitted to have received documents M-11 to M-13. Management examined Shri T. R. Rajagopal, Manager who proved his affidavit M-14 and stated that leave had been sanctioned in favour of the workman vide letter exhibit W-2. He, however, claimed that the workman had abandoned his service, therefore, the Management discharged him from service under the Bipartite Settlement. He admitted that under the Bipartite Agreement a notice was required to be given to the workman and stated that a notice was given to the workman and it was duly served upon him and in the same breath he stated that the notice although was sent on the last known address of the workman, but the cover containing the notice was received back with the report "undelivered." He further admitted that no other mode was followed to see that the notice is served upon the workman such as publication of notice in the newspaper as the bipartite agreement did not prescribe any such mode to be adopted. He, however, denied that the workman was discharged for his mis conduct. I have gone through the file and have also considered the arguments submitted by the Counsel for the parties.

There is no dispute about the fact that he was engaged by the Management as Clerk and he served them from 22nd Sep., 1978 till 24th November, 1989. According to the workman he fell ill and suffered from surval, spondalitus, therefore, he could not move freely and as per the advice of the doctors remained on leave from 25th Nov., 1989 to 23rd May, 1993. He further applied for extension of

leave and supported his claim with medical certificates. This claim of the workman is disputed by the Management. According to them the workman absented from duty, therefore, the management served him with various letters as detailed in para 3 of Written Statement on merits, asking the workman inter alia to substantiate his illness by medical records. He was also told that since he had not rejoined his duties therefore, he is being treated as having retired voluntarily from service. The claim of the workman is that he applied for extension of leave and the Management asked him to submit the detail of his treatment duly supported by X-ray and physiotherapist reports and the doctors prescriptions. He claimed that he submitted those records but he received no response therefore, he presumed that the Management has sanctioned the leave. The Management has denied this claim of the workman. The workman has failed to produce any evidence to support his claim that he had submitted the medical certificates, X-ray report in support of claim of his illness.

The workman further claimed that he shifted to his family house at Kaithal and applied for extension of leave up to 10th August, 1994 and intimated the change of address to the Management. As against to it the Management Claims that the workman used to send applications for leave but he did not convey the change of his address to the Management. The workman has failed to produce any evidence to show that he had conveyed the change of his address to the management. Therefore, it is not proved by the workman that he had conveyed the change of his address to the Management.

The Management admitted that the workman rejoined his duty on 20th March, 1993 but claimed that he again applied for leave from 23rd of March, 1993 to 22nd of April, 1993 and then from 23rd of April, 1993 to 23rd of May, 1993. They further claimed that the workman submitted some medical certificates but the Management did not feel satisfied that the workman had genuine cause to be on leave. They further claimed that even when it was certified that he was fit to join his duties still he applied for further leave. Against this assertion of the Management the workman has failed to produce any evidence to show that he had genuine reasons to be on leave. Thus we find that the workman has failed to dislodge the claim of the Management that the workman had absented from duty without any justifiable cause. He did not apply for leave in time. He also failed to substantiate his claim for grant of leave on medical grounds. He further failed to convey the change of his address to the Management. That is why two of the letters sent to him by the Management were received back un-served although in response to the letter of the Management, on the same very address the workman visited the Branch of the Management Bank on 20th March, 1993. All this shows that the workman was getting the letters from the Management but he did not respond to their call. How is that he remained absent from duty for years together and did not thought it necessary to inform the management about the change of his address through any mode including by sending his relation if he was really so ill as is claimed. He produced photo copies of medical certificate issued mainly by one private doctor. The

workman did not produce as evidence to prove those certificates to show that he was really ill as is claimed. From his conduct it is clear that he had abandoned the service voluntarily and did not wish to report back for duty. The Management was therefore justified to treat the workman having voluntarily abandoned his employment w.e.f. 26th of Nov., 1993. There is no merit in the claim of the workman that the termination of his services was illegal, unconstitutional and against the principles of Natural justice and the provisions of the Act.

In view of the discussion made above the reference is answered against the workman holding that he is entitled to no relief. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 305/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2007 को प्राप्त हुआ था।

[सं. एल-12011/284/2000-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 27th August, 2007

S.O. 2731.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 305/2005 of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 23-8-2007.

[No. L-12011/284/2000-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II CHANDIGARH

Shri Kuldip Singh, Presiding Officer

CASE I.D. NO. 305/2k5

Registered on : 11-8-2005

Date of Decision : 19-5-2007

The General Secretary, UCO Bank Employees Union
Central Office, C/o UCO Bank, G.T. Road, Jalandhar
(Punjab) ... Petitioner

Versus

The Zonal Manager, UCO Bank, Zonal Office, SCO No. 1092-93, Sector-22-B, Chandigarh

... Respondent

APPEARANCE

For the Workman : Mr. R. K. Walia, Advocate

For the Management : Mr. N. K. Zakhmi, Advocate

AWARD

The following reference was received from Government of India, Ministry of Labour vide their letter No. L-12011/284/2000-IR (B-II) dated 28th of March 2001 :

"Whether the action of the Management of UCO Bank in imposing the Penalty of reduction of Pay by one stage in the time scale on Shri S. N. Teneja, Special Asst. of Rohtak Branch is just and legal ? If not, what relief the workman is entitled to ?"

The notice of the reference was given to the parties who appeared through their counsel. The workman filed his statement of claim and the Management their written statement. The workman filed rejoinder and the affidavit of Sh. Krishan Lal, General Secy. of Trade Union as witness of the workman. The Mgt. has filed photocopy of the enquiry proceeding. However, I find that the mgt. has not filed the affidavit of their witness in support of their pleadings.

This tribunal is required to adjudicate upon the fact whether the action of the mgt. of UCO Bank in imposing the penalty of reduction of pay by one stage in the time scale of Sh. S. N. Taneja, Special Asstt. Rohtak Branch is just and legal. If not to what relief the workman is entitled to. The workman has claimed that the mgt. had served upon him the chargesheet on 19-11-1998, under the signature of Regional Manager alleging the workman having committed misconduct relating to FDRs as mentioned in the chargesheet. It was alleged that the workman violated the rules and also did not act with due diligence. The workman claims that the charge leveled against him was totally baseless; and that he had acted in accordance with rules and procedure and with bona fide intentions. He further claims that it was the Manager who, under his own hand, had put the note on the FDRs "Lien Cancelled" and the workman had no authority to question the order of the Manager. According to him the FDRs were the security documents to be retained by the Officer, Loans in-charge and the same could not be released unless the loan was adjusted. The workman was no way connected with the loan department.

The further case of the workman is that the submission made by the workman was not given due consideration. He was not given the notice of appointment of the Enquiry Officer nor the same was displayed on the notice board. The enquiry was also not held in accordance with prescribed procedure. The workman was not given opportunity to defend himself. The Enquiry Officer adopted noble procedure. He segregated the articles of charges and included those charges which were beyond the allegations in the charge sheet. The Enquiry Officer acted in a biased manner. He relied upon the documents which

were not proved in accordance with law. The show cause notice issued was bad in law as the workman was in no way connected with the job where the irregularities were alleged to have taken place. In fact the irregularities committed by others but were attributed him. The Enquiry Officer did not go into the matter as to how the documents against which the loan was extended came in possession of depositors although the loans had not been adjusted by then. The appellate authority also did not apply its mind and acted mechanically and reduced the penalty to "one stage downgrading". He prayed for setting aside the order of the Disciplinary as well as the Appellate Authorities.

The Management has raised preliminary objections to the maintainability of the reference and submitted that the reference is not maintainable since the workman was guilty of misconduct. He renewed/paid the amount of FDRs which were under the lien of the Management, for having advanced loans against that security, although the loan had not been paid thus the workman discharged the lien without justification. He further committed the lapse in not verifying the signatures of the depositors on the FDRs. Thus he failed to protect the interest of the Bank. He was guilty of misconduct as defined by Clause 19.5 (J) of the Bipartite Settlement dated 19th October, 1996 read with Shastri/Desai Awards and subsequent Bipartite settlements. The workman on notice did not advanced satisfactory reply, therefore, an inquiry was initiated against him, in which, the workman was given full opportunity to prove his innocence, but he failed. The charges against the workman were proved. The findings of the Inquiry Officer were found justified, therefore, after a due notice and hearing him personally the Management punished him with the penalty of reduction in pay scale by two stages. On appeal the Appellate Authority, taking a sympathetic view, reduced the punishment to one stage downgrading, in the pay scale for a period of 2 years.

On merits they reiterated the facts stated in the preliminary objections. They denied that the charge against the workman was false. According to them the workman was the incharge of the FDR Department and he had released the lien on those FDRs although FDRs had not been discharged. He further made the mistake in not verifying the signatures of the depositors on the FDRs and thereby jeopardized the interest of the Bank. He did not exercise due care and diligence while acting in the capacity he acted and patently overlooked the instructions issued in that regard. He did not advance satisfactory answer to the chargesheet, therefore, the inquiry was initiated against him, in which the charges were found proved. In reply to the show cause notice against the proposed punishment the workman could not give satisfactory answers. Admitting that the DM was fraudulently cancelled by Sh. S. D. Sharma, they stated that the workman overlooked the instructions mentioned in the FDR. Claiming that the Enquiry Officer was appointed as per rules they stated that the workman had attended all the proceedings alongwith his defence representative. The Management followed the provisions of bipartite settlements, Desai Awards and all other relevant instructions. During the inquiry the workman never raised

a finger against the proceedings. The charges were proved in the inquiry. The workman did not raise any grievance against the inquiry officer or the manner he conducted the inquiry proceedings. The workman nowhere denied that he had not ignored the lien noted on the FDRs and on the register, while renewing and making the payment of FDRs. In that situation it did not lie in its mouth to trade the charges against others, without explaining his own conduct properly. The inquiry officer had given full opportunity to the workman defend himself, to produce evidence whatever he liked. Even the Appellate Authority gave the workman personal hearing and it was only after due consideration of the evidence available on record that the workman was held to be guilty of misconduct and was awarded the punishment which was also too lenient to be doubted. The action of the Management was proper, justified and in accordance with the principles of natural Justice. Although the punishment awarded by the Disciplinary Authority was proper still the Appellate Authority reduced the same by taking lenient view in the matter. The inquiry conducted was fair and proper and the punishment awarded was not only proper, but very very lenient, therefore, the workman is not entitled to any relief.

The workman filed the rejoinder in which he only reiterated what he had stated in the Claim Petition and claimed that the objections raised by the Management are false, vague and without any basis. Without referring as to how the same are not in accordance with law, the workman has made vague allegations without referring to any particular instance. He has also not been able to say as to how the order passed by the Disciplinary Authority was illegal.

It has been noted above that the workman filed his affidavit in support of his pleadings whereas the Management did file any. They have however, placed on record a photocopy of the "day to day proceedings" held by the inquiry officer. The question which this Tribunal has to consider at this stage is whether a fair and proper inquiry was held in this case; and that the punishment awarded proportionate to the misconduct alleged and proved against the workman. It has to be borne in mind that in a reference under the Act, the Tribunal does not sit in appeal against the order of Disciplinary and Appellate Authorities. In the domestic enquiries the Disciplinary Authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the powers and jurisdiction to re-appreciate the evidence and come to its own conclusions on facts being the sole fact finding authorities. Once finding of facts, based on appreciation of evidence, are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were perverse and or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. What the Tribunal is required to see whether the Enquiry Officer and the Appellate Authority followed the provisions of the I.D. Act and principles of natural justice or not.

Hon'ble Supreme Court in the case of Central Bank of India Ltd. Versus Karunamoy Banerjee reported as

(1967) 2 LLJ 739 held that the rules of natural justice require that the workman proceeded against should be informed clearly of the charges leveled against him; witnesses should be normally examined in his presence in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the inquiry officer should record his findings based on the evidence so adduced. Karnataka High Court in the case of GR Venkateshwara Reddy Vs. Karnataka State Road Transport Corporation, reported as (1995) 1 LLJ 1011 has laid down the following requirements of reasonable procedure subject to any special provisions relating to procedure in the relevant rules, regulations, standing orders or a statute :

- (a) the employee shall be informed of the exact charges which he is called upon to meet;
- (b) he should be given an opportunity to explain any material relied on by the management to prove the charges;
- (c) the evidence of the management witnesses should be recorded in the presence of the delinquent employee and he should be given an opportunity to cross-examine such witnesses;
- (d) the delinquent employee shall either be furnished with copies of the documents relied on by the Management or be permitted to have adequate inspection of the documents relied on by the Management;
- (e) the delinquent employee should be given the opportunity to produce relevant evidence—both documentary and oral which include the right to examine self and other witnesses; and to call for relevant and material documents in the custody of the employer;
- (f) whenever the inquiring authority is different from disciplinary authority, the delinquent employee shall be furnished with a copy of the inquiry report and be permitted to make a presentation to the disciplinary authority against the findings recorded in the inquiry report.

Keeping these principles in mind I proceed to examine the claim of the workman to find out whether the enquiry held against the workman was fair and proper or not. After going through the record of enquiry proceedings I find that the enquiry held against the work was fair and proper. The workman in paras No. 3 and 4 of his claim petition admitted that the Management had served upon him the chargesheet. The workman nowhere claimed that he had not dealt with the job of FDRs (Fixed Deposit Receipts) in question or that he had not renewed the same or authorized the payment thereof. He also did not deny both FDRs were under the lien of the Management having been retained as a Security for the loan extended to the holder of those

FDRs. He only alleged that it was not part of his duty to deal with the loan department or with the FDRs in question. So the lapse committed was not a part of his official duties. He further claimed that he had acted in a bona fide manner and the Manager, who had cancelled the lien, under his own authentication, was the person responsible. I fail to understand this claim of the workman for the reason that he was an employee of the Bank and was supposed to act, by keeping his eyes open and due diligence. Had he raised objection to the cancellation of the lien, as was accepted of him, his bona fide could be accepted. To say that he was not assigned the job of loan department or that the lien was not cancelled by him so, therefore, he was not responsible for that is no answer to the misconduct alleged against him.

In his statement of claim he made charges against the inquiry officer, the Disciplinary Authority and the Appellate Authority claiming that the inquiry officer and the Disciplinary Authority did not take note of the fact that the charges framed against him did not relate to his official duties; that the submission made by him was not given the due consideration and the inquiry was not held in accordance with the rules of procedure nor he was given opportunity to defend himself. The inquiry was conducted in a biased manner. He raised procedural contentions, but I find that in support of his all these allegations he has not clearly pointed out the conduct of the Inquiry Officer nor referred the rules concerning the inquiry and the conduct of business for issuing FDRs and grant of loan in support of his claim. The grievances raised by him are vague and not specific, therefore, he has failed to show to what conduct of the inquiry officer showed that he was biased against him and why he was so, he has not shown. If we look into the inquiry proceedings it is crystal clear that the inquiry was held against the workman in a fair and proper manner. As stated above, the workman has not denied that he was the person who had dealt with the FDRs and was instrumental in getting the lien cancelled, over the FDRs in question. He has only raised the claim that he was not really assigned the job of those FDRs, loans, therefore he was not responsible of the Lien being cancelled under the hand of the Manager. The fact remains that he was instrumental in dealing with those FDRs and that the FDRs were the security against the loan extended by the Management and by his conduct he helped in jeopardizing in the interest of the Management. The Management acted in a fair manner and provided full opportunity to the workman to defend himself. He took part in all the proceedings he was represented by Sh. R. K. Walia. He was provided with the details of the documents to be produced against him. The workman gave his reply to the charge sheet and requested for dropping the charges. The witnesses produced by the Management were cross examined by the representative of the workman. He produced witnesses in his defence like V. K. Verma, A. K. Kapoor. The representative of the workman filed his submissions in writing. I further find that in the inquiry proceedings the workman and his representative nowhere raised any finger about the manner the inquiry was conducted. Rather the proceedings shows that whenever

the workman asked for any documents the inquiry officer saw to it that the same were provided to the workman well before the same were to be considered. The workman has therefore failed to show that the inquiry against him was not conducted properly and fairly.

The next question is, whether the punishment awarded to the workman was disproportionate or proper. After going through the record I am of the opinion that the punishment awarded was not only proper, but very lenient. How could a financial institution afford the misconduct of its employee who by his conduct jeopardizes its interest although from which he was earning his livelihood from it. It was the institution which was holding the trust of investors. The money advanced by the bank was the money of the people and if the loanee succeeded in getting the lien cancelled and the money withdrawn, with the help of the workman, the conduct of the workman was against the interest of the Bank, as well as the depositor. I feel that the Management was very considerate to give him a light punishment. After going through the file and the submissions made by the parties I am of the opinion that the workman is not entitled to any relief. The award is passed against him. Let a copy of this award be sent to the appropriate Government for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2732.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, ओद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 89/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/32/1999-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/32/1999-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 89/2004

(Principal Labour Court CGID No. 264/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri G. Sethuraman : I Party/Petitioner

ANDThe Assistant General : II Party/Management
Manager,
State Bank of India,
Zonal Office,
Madurai.**APPEARANCE**For the Petitioner : Sri V.S. Ekambaram,
Authorised RepresentativeFor the Management : M/s. K. Veeramani,
Advocates**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/32/99-IR(B-I) dated 10-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 264/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 89/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri G. Sethuraman, wait list No. 245 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Jayamangalam branch from 14-06-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court.

The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Jayamangalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-06-1983, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Theppakulam— Madurai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according

to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 245 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar

months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 245, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future

employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 245 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997

before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging

casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W1. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, those persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wages in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and

non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in W.M.P. No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(e) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the

Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in

age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the

settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I L.I.J 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries, Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy.” In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable.” Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working

on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other

inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.'

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri G. Sethuraman
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri M. Perumal

Documents Marked :

| Ex. No. | Date | Description |
|---------|----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |

| Ex. No. | Date | Description |
|---------|----------|--|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 18-06-84 | Xerox copy of the service certificate issued by Theni branch. |
| W10 | 03-06-88 | Xerox copy of the service certificate issued by Jayamangalam branch. |
| W11 | 13-03-95 | Xerox copy of the service certificate issued by Theni branch. |
| W12 | 02-04-97 | Xerox copy of the service certificate issued by Theppakulam branch. |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. |
| W14 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W18 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W19 | 26-03-97 | Xerox copy of the letter advising selection of part time Menjal—G. Pandi. |

| Ex.No. | Date | Description |
|--------|-----------|---|
| W20 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W23 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W24 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W26 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W27 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2733.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतांत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 87/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/41/1999-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2733.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/41/1999-IR (B-I)]
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT**K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE No. 87/2004****(Principal Labour Court CGID No. 261/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Raju : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Z.O. Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : Mr. B. Rajendran, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/41/99-IR(B-I) dated 10-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 261/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 87/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri A. Raju, wait list No. 339 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Usilampatti branch from 1-1-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Usilampatti branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1-1-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Valendur,

Usilampatti branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 339 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 339, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements

were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 339 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses; the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001.

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner? Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable.” Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri A. Raju

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

Documents Marked :

| Ex.No. | Date | Description |
|--------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |

| Ex.No. | Date | Description |
|--------|-----------|---|
| W9 | 22-08-88 | Xerox copy of the service certificate issued by Usilampatti branch. |
| W10 | 04-03-93 | Xerox copy of the service certificate issued by Usilampatti—Valandur branch. |
| W11 | 03-01-94 | Xerox copy of the service certificate issued by Usilampatti branch. |
| W12 | 19-05-97 | Xerox copy of the service certificate issued by Usilampatti branch. |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees. |
| W14 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W18 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W19 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W20 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W23 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W24 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |

| Ex.No. | Date | Description |
|--------|----------|--|
| W26 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W27 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2734.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 55/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/263/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2734.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/263/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 55/2004

(Principal Labour Court CGID No. 77/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Pitchumani : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Z.O. Madurai. : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : Shri R. Krishnamachari, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/263/1998-IR(B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 77/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as L.D. No. 55/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri P. Pitchumani, wait list No. 407 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment

as messenger after an interview and medical examination. He was appointed on temporary basis at Tiruchandur branch from 12-12-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tiruchendur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 12-12-1983, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Tiruchendur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the

Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 407 in waitlist of Zonal Office, Chennai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more

number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 407, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously

with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 407 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has

become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of

'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the

basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have

refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ was disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the

temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of

the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The

Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for

reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to

exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard

to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri P. Pitchumani

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

Documents Marked :

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | Nil | Xerox copy of the service particulars of Petitioner issued by Tiruchendur branch. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|---------------|-------------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2735.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 91/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/534/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2735.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-08-2007.

[No. L-12012/534/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 91/2004

(Principal Labour Court CGID No. 268/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen.]

BETWEEN

Sri V. Karuppusamy : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Zonal Office,
Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/534/98-IR(B-I) dated 22-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 268/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 91/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri Karuppusamy wait list No. 290 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Dindigul branch from 26-07-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Dindigul branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 26-07-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Dindigul

branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank.

The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 290 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 290, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements

of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 290 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for

appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further,

according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that “to employ workmen as ‘badlies’ casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.” Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner’s case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial

Disputes Act; therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that “the expression ‘actually worked under the employer’ cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.”. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank’s circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement

entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been

arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held

that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion

of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned

directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual

wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation,

privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri V. Karuppusamy
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri M. Perumal

Documents Marked :

| Ex.No. | Date | Description |
|--------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 04-09-85 | Xerox copy of the service certificate issued by Dindigul branch. |

| Ex.No. | Date | Description | For the Respondent/Management : | |
|---------------|-------------|---|--|--|
| W10 | Nil | Xerox copy of the service certificate issued by Dindigul branch. | M1 17-11-87 Xerox copy of the settlement. | |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matter issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | M2 16-07-88 Xerox copy of the settlement. | |
| W12 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. | M3 27-10-88 Xerox copy of the settlement. | |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M4 09-01-91 Xerox copy of the settlement. | |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M5 30-07-96 Xerox copy of the settlement. | |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M6 09-06-95 Xerox copy of the minutes of conciliation proceedings. | |
| W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M7 28-05-91 Xerox copy of the order in W.P. No. 7872/91. | |
| W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | M8 15-05-98 Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. | |
| W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. | M9 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99. | |
| W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. | M10 Nil Xerox copy of the wait list of Madurai Module. | |
| W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. | M11 25-10-99 Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. | |
| W21 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. | नई दिल्ली, 28 अगस्त, 2007 | |
| W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. | का. आ. 2736.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 261/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2007 को प्राप्त हुआ था। | |
| W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. | [सं. एल-12012/458/1998-आई आर (बी-I)] अजय कुमार, डेस्क अधिकारी | |
| W24 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. | New Delhi, the 28th August, 2007 | |
| W25 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. | S.O. 2736.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 261/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007. | |

[No. L-12012/458/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 261/2004

(Principal Labour Court CGID No. 205/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri E. Thirumoorthy : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Zonal Office,
Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/458/99-IR(B-I) dated 11-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 205/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 261/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri E. Thirumoorthy, wait list No. 370 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Guindy branch from May, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which

was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a

copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Guindy branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From May, 1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in CAG branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according

to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 370 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar

months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 370, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future

employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 370 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997

before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contend that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the avertments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging

casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-

preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the

Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in

age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the

settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LABIC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working

on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that “merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri E. Thirumoorthy

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked :

Ex.No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

| Ex.No. | Date | Description |
|--------|----------|---|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 23-06-86 | Xerox copy of the service certificate issued by Guindy branch. |
| W10 | 11-11-93 | Xerox copy of the service certificate issued by Meenambakkam Airport branch. |
| W11 | 06-02-98 | Xerox copy of the service certificate issued by NRI branch. |
| W12 | 06-02-98 | Xerox copy of the service certificate issued by NRI branch. |
| W13 | 23-01-02 | Xerox copy of the service certificate issued by CAG branch. |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W15 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W19 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |

| Ex.No. | Date | Description |
|--------|-----------|---|
| W20 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W21 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W23 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W24 | 09-11-92 | Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff. |
| W25 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W26 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W27 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W28 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2737.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 105/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/367/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2737.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/367/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 105/2004

(Principal Labour Court CGID No. 93/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Nagarajan : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I, Trichirappalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. V. Sundar Anandan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/367/98-IR(B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 93/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 105/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri S. Nagarajan, wait list No. 304 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karur Branch from 30-08-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-08-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Karur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that

his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/

Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 304 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 304, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea.

It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 304 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme

Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come— first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is

clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the

rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on

behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement

directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an

underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the

Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not

get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme

Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that “merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged

by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been

appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to

be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri Nagarajan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T.L. Selvaraj

Documents Marked :

| Ex.No. | Date | Description |
|--------|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 19-12-83 | Xerox copy of the service certificate issued by Karur branch. |
| W10 | 24-12-92 | Xerox copy of the service certificate issued by Karur branch. |
| W11 | 20-08-92 | Xerox copy of the service certificate issued by Karur branch. |
| W12 | 02-08-96 | Xerox copy of the service certificate issued by Karur branch. |
| W13 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W14 | Nil | Xerox copy of the Vol. III of Reference book on staff matters upto 31-12-95. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W18 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W19 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W20 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W21 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W22 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W23 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W24 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W25 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W26 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W27 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |

| Ex.No. | Date | Description |
|--------|----------|--|
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2738.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 97/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/299/1998-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2738.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/299/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 97/2004

(Principal Labour Court CGID No. 40/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. K. Rajendran : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I Trichirapalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative
For the Management : M/s. V. Sundar Anandan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/299/IR(B-I) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 40/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 97/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri S. K. Rajendran wait list No. 391 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tiruchirapalli branch from 28-10-1985. During 1985-86, the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through

advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tiruchirapalli branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 28-10-1985, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Tiruchirapalli branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 391 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary

employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 391, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the

instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 391 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner

has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have

prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year

1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the

Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected IDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the

provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra-Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding

on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the

exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision

has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance

extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/

Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under

Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed

240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri S. K. Rajendran
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T. L. Selvaraj

Documents Marked :

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |

| Ex.No. | Date | Description | Ex.No. | Date | Description |
|---------------|-------------|---|--|-------------|---|
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W25 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W26 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W9 | 23-04-86 | Xerox copy of the service certificate issued by Trichy branch. | W27 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W10 | 04-03-92 | Xerox copy of the service certificate issued by Trichy branch. | W28 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W11 | 06-04-93 | Xerox copy of the service certificate issued by Trichy branch. | W29 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W12 | 03-11-93 | Xerox copy of the service certificate issued by Melachinthamani branch. | W30 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W13 | 02-05-94 | Xerox copy of the service certificate issued by Trichy branch. | W31 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W14 | 19-07-95 | Xerox copy of the service certificate issued by Trichy branch. | W32 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W15 | 12-09-96 | Xerox copy of the service certificate issued by Trichy branch. | For the Respondent/Management : | | |
| W16 | 26-11-97 | Xerox copy of the service certificate issued by Trichy branch. | Ex.No. | Date | Description |
| W17 | 19-10-85 | Xerox copy of the letter calling for interview from Respondent/Bank. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W18 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W19 | Nil | Xerox copy of the Vol. III Reference book on staff matters upto 31-12-95. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W20 | 06-03-97 | Xerox copy of call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| W21 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M5 | 30-07-96 | Xerox copy of the settlement. |
| W22 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| W23 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| W24 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2739.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 95/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/642/1998-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2739.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 95/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/642/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 95/2004

(Principal Labour Court CGID No. 306/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri C. Kochadayan : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India, Z.O.
Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/642/98-IR(B-I) dated 3-5-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 306/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 95/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri C. Kochadayan, wait list No. 297 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periakulam branch from 22-5-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periakulam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 22-5-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Periakulam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the

Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in

seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 297 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 297, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) “Whether the demand of the Petitioner in Wait List No. 297 for restoring the wait list of temporary messengers in the Respondent/Bank

and consequential appointment thereupon as temporary messenger is justified ?”

(ii) “To what relief the Petitioner is entitled ?”

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait-list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared

on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequal. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that “to employ workmen as ‘badlies’ casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.” Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner’s case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is

illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that “the expression ‘actually worked under the employer’ cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.”. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank’s circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation

were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or

concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt

to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion

of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a backdoor; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned

directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual

wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is, not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri C. Kochadaiyan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

Documents Marked :

| Ex. No. | Date | Description |
|----------------|-------------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | Nil | Xerox copy of the service particulars of Petitioner issued by Periyakulam branch. |

| Ex.No. | Date | Description | For the Respondent/Management : |
|---------------|-------------|---|--|
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | Ex.No. Date Description |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. | M1 17-11-87 Xerox copy of the settlement. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M2 16-07-88 Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M3 27-10-88 Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M4 09-01-91 Xerox copy of the settlement. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M5 30-07-96 Xerox copy of the settlement. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | M6 09-06-95 Xerox copy of the minutes of conciliation proceedings. |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. | M7 28-05-91 Xerox copy of the order in W.P. No. 7872/91. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. | M8 15-05-98 Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. | M9 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. | M10 Nil Xerox copy of the wait list of Madurai Module. |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. | M11 25-10-99 Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. | |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. | |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. | |

नई दिल्ली, 28 अगस्त, 2007

का.आ. 2740.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, ओद्योगिक अधिकरण, चैनई के पंचाट (संदर्भ संख्या 90/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2007 को प्राप्त हुआ था।

[सं. एल-12012/533/1998-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007.

S.O. 2740.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-08-2007.

[No. L-12012/533/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 90/2004

(Principal Labour Court CGID No. 267/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Veerapandian : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Zonal Office,
Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. Veeramani,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/533/98-IR(B-I) dated 22-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 267/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 90/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Veerapandian, wait list No. 403 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karaikudi branch from 15-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The

Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karaikudi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 15-6-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Karaikudi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank

has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 403 in wait list of Zonal Office, Chennai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees

who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 403, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 403 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542(civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the

retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the

guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of

circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/

Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they

find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional

cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though

(a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para I2 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of

retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and

Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri S. Veerapandian

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

Documents Marked :

Ex. No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 03-06-88 | Xerox copy of the service particulars of Petitioner issued by Karaikudi branch. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |

| Ex.No. | Date | Description |
|--------|----------|---|
| W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2741.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 100/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/304/1998-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2741.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/304/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 100/2004

(Principal Labour Court CGID No. 43/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri V. Lakshmanan : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I Trichirappalli : II Party/Management

APPEARANCE
For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. V. Sundar Anandan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/304/98-IR(B-I) dated 02-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No.43/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 100/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri V. Lakshmanan, wait list No. 651 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kailasapuram branch from 12-9-1988. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kailasapuram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 12-9-1988, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Kailasapuram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the

grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said

settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 651 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 651, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for

appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 651 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored

by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularization of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H

cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages

daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years

with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on

which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein, the Supreme Court has held that “the expression ‘actually worked under the employer’ cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.”. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank’s circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on

the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that “in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.” Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that “therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement.” It further held that “there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.” Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that “settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also.” He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that “settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.” Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged

that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court

is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents

as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a backdoor; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted

that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so-called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their

appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank

and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri V. Lakshmanan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri T.L. Selvaraj

Documents Marked :

| Ex.No. | Date | Description |
|--------|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 05-04-89 | Xerox copy of the service certificate issued by Regional Engg. College, Trichy branch. |
| W10 | 05-08-89 | Xerox copy of the service certificate issued by Trichy New BHEL branch. |
| W11 | 26-07-93 | Xerox copy of the service certificate issued by Tuvakudi branch. |
| W12 | 26-07-93 | Xerox copy of the service certificate issued by Tuvakudi branch. |
| W13 | 02-08-93 | Xerox copy of the service certificate issued by Regional Engg. College, Trichy branch. |
| W14 | 20-06-95 | Xerox copy of the service certificate issued by Trichy Kamarajapuram branch. |
| W15 | 27-10-95 | Xerox copy of the service certificate issued by Tuvakudi branch. |
| W16 | 25-11-97 | Xerox copy of the service certificate issued by Kailasapuram branch. |
| W17 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W18 | Nil | Xerox copy of Vol. III of Reference book on staff matters upto 31-12-95. |
| W19 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W20 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W21 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W22 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W23 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W24 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W25 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W26 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W27 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W28 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W29 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |

| Ex.No. | Date | Description |
|--------|----------|--|
| W30 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W31 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2742.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 276/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/513/1998-आई आर (बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2742.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 276/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/513/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 276/2004

(Principal Labour Court CGID No. 232/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Gunasekaran : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office, Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/513/1998-IR(B-I) dated 19-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 232/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 276/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri S. Gunasekaran, wait list No. 512 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment

as messenger after an interview and medical examination. He was appointed on temporary basis at T. Nagar branch from 16-7-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the T. Nagar branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-7-1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in T. Nagar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the

Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 642 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged

for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 642, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously

with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 512 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has

become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of

'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the

basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have

refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the

temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of

the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The

Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot

plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi and Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that “merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly

held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard

to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri S. Gunasekaran
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :

| Ex. No. | Date | Description | Ex. No. | Date | Description |
|----------------|-------------|---|--|-------------|---|
| W1. | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. | W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. | W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. | W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. | W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. | W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. | W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. | W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. | W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W9 | 11-02-82 | Xerox copy of the service certificate issued by T. Nagar branch. | W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | For the Respondent/Management : | | |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. | Ex. No. | Date | Description |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikanman. | M1 | 17-11-87 | Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M2 | 16-07-88 | Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M3 | 27-10-88 | Xerox copy of the settlement. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M4 | 09-01-91 | Xerox copy of the settlement. |
| | | | M5 | 30-07-96 | Xerox copy of the settlement. |
| | | | M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| | | | M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| | | | M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| | | | M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| | | | M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| | | | M11 | 25-10-99 | Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2743.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार, ऑद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 277/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/569/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S. O. 2743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 277/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/569/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 277/2004

(Principal Labour Court CGID No. 233/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Periyanagam, : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Region-I,
Trichirapalli

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : Mr. F.B. Benjamin George,
Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/569/IR(B-I) dated 26-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 233/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 277/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri A. Perianayagam, wait list No. 246 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Palayamkottai branch from 13-4-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Palayamkottai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-4-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also.

While working on temporary basis in Palayamkottai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 246 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 246, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements

were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 246 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retriemphism as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/ Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 and W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes

brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as

alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21.. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri Periyananagam
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T.L. Selvaraj

Documents Marked :

| Ex.No. | Date | Description |
|--------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W9 | 23-11-94 | Xerox copy of the service certificate issued by Panruti branch. |
| W10 | 02-07-98 | Xerox copy of the service certificate issued by Palayamkottai branch. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W12 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W21 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W24 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W25 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|---------------|-------------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कुर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 282/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/629/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/629/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 282/2004

(Principal Labour Court CGID No. 295/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri G. Pandian : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Zonal Office,
Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/629/98-IR(B-I) dated 03-05-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 295/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 282/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri G. Pandian, wait list No. 599 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at C.I.T. Nagar branch from 24-11-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The

Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the C.I.T. Nagar branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 24-11-1980, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in C.I.T. Nagar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies.

The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 599 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar

months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 599, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future

employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 599 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8: In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997

and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories

of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wages in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is

not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also

for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a

continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an

individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. "In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more

than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi

& Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that “merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would

not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a

bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri G. Pandian

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked :

Ex.No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

| Ex.No. | Date | Description |
|--------|-----------|--|
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 18-08-88 | Xerox copy of the service certificate issued by CIT Nagar branch. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinates cadre and service conditions. |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |

| Ex. No. | Date | Description |
|---------|----------|---|
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex. No. | Date | Description |
|---------|----------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Chennai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक

अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 156/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/408/1998-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2745.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 156/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/408/1998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 156/2004

(Principal Labour Court CGID No. 199/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Ilayaperumal : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I, Trichirapalli : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/408/98-IR(B-I) dated 10-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 199/99 and issued notices to both parties. Both sides entered appearance and filed

their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 156/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri A. Ilayaperumal wait list No. 436 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karuvepilankuruchi branch from 13-8-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karuvepilankuruchi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-8-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Karuvepilankuruchi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute

with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 436 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 436, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 436 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme

Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is

clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the

rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on

behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement

directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an

underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR

1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on

6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of

Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not

made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner

has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri A. Ilayaperumal
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T. L. Selvaraj

Documents Marked :

Ex.No. Date Description

| Ex.No. | Date | Description |
|--------|-----------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 18-07-88 | Xerox copy of the service certificate issued by Karuvepilankurichi ADB branch. |
| W10 | Nil | Xerox copy of the statement showing service particulars of the Petitioner. |
| W11 | 05-06-98 | Xerox copy of the service certificate issued by Karuvepilankurichi ADB branch. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W13 | Nil | Xerox copy of Vol. III of Reference book on staff matters upto 31-12-95. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W17 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W19 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W22 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W24 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W25 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W26 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|---------------|-------------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2746.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, ओद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 96/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/298/1998-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2746.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 96/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/298/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 96/2004**(Principal Labour Court CGID No. 39/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri M. Thangavel : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Region-I Trichirapalli

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : M/s. V. Sundar Anandan, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/298/98-IR(B-I) dated 2-2-1998 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 39/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 96/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri M. Thangavel wait list No. 311 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kulithalai branch from 19-9-1985. During 1985-86 the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court.

The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kulithalai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 19-9-1985, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Trichirapalli Main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies.

The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claims as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 311 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed, temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar

months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 311, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future

employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 311 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997

before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging

casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and

non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the

Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in

age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the

settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi and Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working

on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a

bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri M. Thangavelu
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T. L. Selvaraj

Documents Marked :

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 03-10-96 | Xerox copy of the service certificate issued by Kulithalai Branch. |
| W10 | 18-07-86 | Xerox copy of the service certificate issued by Trichy branch. |
| W11 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W12 | Nil | Xerox copy of the Vol. III of Reference book on staff matters upto 31-12-95. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W16 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |

| Ex.No. | Date | Description |
|---------------|-------------|---|
| W17 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W18 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W19 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W20 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W21 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W22 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W23 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W24 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W25 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|---------------|-------------|--|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2747.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार, ओद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 59/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/369/1998-आई आर (बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/369/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 59/2004

(Principal Labour Court CGID No. 81/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Perumal : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office, Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : Mr. D. Mukundan, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/369/98-IR(B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 81/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 59/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri P. Perumal, wait list No. 443 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kurumbur branch from 2-1-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kurumbur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-1-1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Kurumbur

branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank.

The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 443 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 443, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements

of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 443 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included. in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected IDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi and Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S. C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri P. Perumal
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri M. Perumal

Documents Marked :

| Ex. No. | Date | Description |
|---------|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |

| Ex.No. | Date | Description | For the Respondent/Management : |
|--------|-----------|---|---|
| W9 | 01-08-88 | Xerox copy of the service particulars of Petitioner issued by Kurumbur branch. | M1 17-11-87 Xerox copy of the settlement. |
| W10 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. | M2 16-07-88 Xerox copy of the settlement. |
| W11 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. | M3 27-10-88 Xerox copy of the settlement. |
| W12 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. | M4 09-01-91 Xerox copy of the settlement. |
| W13 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. | M5 30-07-96 Xerox copy of the settlement. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. | M6 09-06-95 Xerox copy of the minutes of conciliation proceedings. |
| W15 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. | M7 28-05-91 Xerox copy of the order in W.P. No. 7872/91. |
| W16 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. | M8 15-05-98 Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| W17 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. | M9 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| W18 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. | M10 Nil Xerox copy of the wait list of Madurai Module. |
| W19 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. | M11 25-10-99 Xerox copy of the order passed in CMP Nos. 16289 & 16290/99 in W.A. No. 1893/99. |
| W20 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. | |
| W21 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. | |
| W22 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. | |
| W23 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. | |
| W24 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. | |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 60/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/269/1998-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2748.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/269/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE No. 60/2004**(Principal Labour Court CGID No. 82/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Manivel : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Zonal Office,
Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : Mr. D. Mukundan,
Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/269/98-IR(B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 82/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 60/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri P. Manivel, wait list No. 321 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Palamedu branch from 11-02-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The

Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Palamedu branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Palamedu branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank

has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 321 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees

who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 321, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 321 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they

questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the

guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of

separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP. No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in

regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.D.s have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in

age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the

settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularization of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working

on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference; they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri P. Manivel

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

Documents Marked :

Ex.No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

| Ex.No. | Date | Description |
|--------|----------|--|
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 06-05-91 | Xerox copy of the service certificate issued by Palamedu branch. |
| W10 | 08-02-95 | Xerox copy of the service certificate issued by Palamedu branch. |
| W11 | 28-11-00 | Xerox copy of the service certificate issued by Palamedu branch. |
| W12 | 28-11-00 | Xerox copy of the service certificate issued by Palamedu branch. |
| W13 | Nil | Xerox copy of the attendance register. |
| W14 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditons. |
| W15 | Nil | Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W17 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W18 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W19 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W20 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |

| Ex.No. | Date | Description |
|--------|-----------|---|
| W21 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W22 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W23 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W24 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W25 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W26 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W27 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W28 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Madurai Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 104/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/250/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2749.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 104/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No.L-12012/250/1998-IR(B-I)]
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT**K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 104/2004****(Principal Labour Court CGID No. 74/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Fatimraj : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,
Region-I
Trichirapalli : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. V. Sundar Anandan,
Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/250/98-IR(B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 74/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 104/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri R. Fatimaraj, wait list No. 477 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Lalgudi branch from 1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Lalgudi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Tiruchirapalli branch, another

advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank.

The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 477 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 477, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far

and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 477 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that, the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri R. Fathimaraj
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri T.L. Selvaraj

Documents Marked :

Ex.No. Date Description

| | | |
|----|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |

| Ex.No. | Date | Description |
|--------|-----------|---|
| W9 | 15-06-88 | Xerox copy of the service certificate issued by Kattur ADB branch. |
| W10 | 18-06-88 | Xerox copy of the service certificate issued by Lalgudi branch. |
| W11 | 17-12-91 | Xerox copy of the service certificate issued by Lalgudi branch. |
| W12 | Nil | Xerox copy of the service certificate issued by Lalgudi branch. |
| W13 | 31-03-93 | Xerox copy of the service certificate issued by Trichy branch. |
| W14 | 06-05-94 | Xerox copy of the service certificate issued by Trichy branch. |
| W15 | 19-06-95 | Xerox copy of the service certificate issued by Trichy branch. |
| W16 | 16-07-96 | Xerox copy of the service certificate issued by Tiruchirapalli branch. |
| W17 | 25-03-98 | Xerox copy of the service certificate issued by Tiruchirapalli branch. |
| W18 | 19-09-98 | Xerox copy of the service certificate issued by Lalgudi branch. |
| W19 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W20 | Nil | Xerox copy of Vol. III of Reference book on staff matters upto 31-12-95. |
| W21 | 06-03-97 | Xerox copy of call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W22 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W23 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W24 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W25 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W26 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W27 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W28 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |

| Ex.No. | Date | Description |
|--------|----------|---|
| W29 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W30 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |
| W31 | 09-07-92 | Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants. |
| W32 | 07-02-06 | Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants. |
| W33 | 31-12-85 | Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre. |

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Trichy Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 28 अगस्त, 2007

का. आ. 2750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 29/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/558/1998-आई आर (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 28th August, 2007

S.O. 2750.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 28-8-2007.

[No. L-12012/558/I998-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 29/2004

(Principal Labour Court CGID No. 276/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri S. Mathaiyan : I Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office, Madurai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram, Authorised Representative

For the Management : Mr. K. Veeramani, Advocate

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/558/98-IR(B-I) dated 22-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 276/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 29/2004.

2. The Schedule mentioned in that order is as follows :—

"Whether the demand of the workman Shri S. Mathaiyan, wait list No. 321 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified ? If so, to what relief the said workman is entitled ?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Harur branch from 12-8-1984. During 1985-86, the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Harur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 12-8-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Harur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to

Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation

proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 321 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 321, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily

wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 321 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for

interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched

workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances,

as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and

privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they

have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass

Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the

federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between

the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and

therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an

irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also

held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been

appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the Labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri S. Mathaiyan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :

| Ex. No. | Date | Description |
|----------------|-------------|--------------------|
|----------------|-------------|--------------------|

| | | |
|----|----------|--|
| W1 | 01-08-88 | Xerox copy of the paper publication in daily Thanthi based on Ex. M1. |
| W2 | 20-04-88 | Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1. |
| W3 | 24-04-91 | Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies. |
| W4 | 01-05-91 | Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4. |
| W5 | 20-08-91 | Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers. |
| W6 | 15-03-97 | Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts. |
| W7 | 25-03-97 | Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97. |

| Ex. No. | Date | Description |
|----------------|-------------|---|
| W8 | Nil | Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work. |
| W9 | 02-08-86 | Xerox copy of the service certificate issued by Harur Branch. |
| W10 | 05-08-88 | Xerox copy of the service certificate issued by Harur Branch. |
| W11 | 22-01-02 | Xerox copy of the service certificate issued by Harur branch. |
| W12 | Nil | Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions. |
| W13 | Nil | Xerox copy of Vol. III of Reference book on staff matters upto 31-12-95. |
| W14 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan. |
| W15 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj. |
| W16 | 06-03-97 | Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan. |
| W17 | 17-03-97 | Xerox copy of the service particulars—J. Velmurugan. |
| W18 | 26-03-97 | Xerox copy of the letter advising selection of part time Menial—G. Pandi. |
| W19 | 31-03-97 | Xerox copy of the appointment order to Sri G. Pandi. |
| W20 | Feb. 2005 | Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle. |
| W21 | 13-02-95 | Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list. |
| W22 | 09-11-92 | Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff. |
| W23 | 09-07-92 | Xerox copy of the minutes of the Bipartite meeting. |

W24 09-07-92 Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.

W25 07-02-06 Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.

W26 31-12-85 Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

| Ex.No. | Date | Description |
|--------|----------|---|
| M1 | 17-11-87 | Xerox copy of the settlement. |
| M2 | 16-07-88 | Xerox copy of the settlement. |
| M3 | 27-10-88 | Xerox copy of the settlement. |
| M4 | 09-01-91 | Xerox copy of the settlement. |
| M5 | 30-07-96 | Xerox copy of the settlement. |
| M6 | 09-06-95 | Xerox copy of the minutes of conciliation proceedings. |
| M7 | 28-05-91 | Xerox copy of the order in W.P. No. 7872/91. |
| M8 | 15-05-98 | Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa. |
| M9 | 10-07-99 | Xerox copy of the order of Supreme Court in SLP No. 3082/99. |
| M10 | Nil | Xerox copy of the wait list of Coimbatore Module. |
| M11 | 25-10-99 | Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99. |

नई दिल्ली, 17 सितम्बर, 2007

का. आ. 2751.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 946 दिनांक 22 मार्च, 2007 द्वारा हिन्दुस्तान एरोनॉटिक्स लिमिटेड जौकि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 8 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 24-3-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 24-9-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/1/2003-आई. आर. (पी.एल.)]
गुरजौत कौर, संयुक्त सचिव

New Delhi, the 17th September, 2007

S.O. 2751.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in Ministry of Labour S.O. No. 946 dated 22-03-2007 the service in Hindustan Aeronautics Limited which is covered by item 8 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months from the 24th March, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 24th September, 2007.

[F. No. S-11017/1/2003-JR (PL)]
GURJOT KAUR, Jt. Secy.

नई दिल्ली, 17 सितम्बर, 2007

का. आ. 2752.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. आ. 945 दिनांक 21-3-2007 द्वारा करेसी नोट प्रेस, नासिक रोड, जौकि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 25 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 21 मार्च, 2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 21-9-2007 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा. सं. एस-11017/2/2006-आई. आर. (पी.एल.)]
गुरजीत कौर, संयुक्त सचिव

New Delhi, the 17th September, 2007

S.O. 2752.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in Ministry of Labour S.O. No. 945 dated 22-3-2007

the service in Currency Note Press, Nashik Road which is covered by item 25 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months with immediate effect.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 21st September, 2007.

[F. No. S-11017/2/2006-IR(PL)]
GURJOT KAUR, Jt. Secy.